TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted] 176

JOSEPH RADICE, PLAINTIFF IN ERROR,

vs.

PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE CITY COURT OF BUFFALO, STATE OF NEW YORK.

FILED DECEMBER 22, 1923.

(29,308)

(29,308)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 758.

JOSEPH RADICE, PLAINTIFF IN ERROR,

vs.

PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE CITY COURT OF BUFFALO, STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 27, 1923.

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Transmittal of Record.

STATE OF NEW YORK:

CITY COURT OF BUFFALO.

Clerk's Office.

City Court Building,
Buffalo, New York, December 18th, 1922.

William R. Stansbury, Clerk United States Supreme Court, Washington, D. C.

DEAR SIR: I have the honor to send express prepaid a transcript of the printed record on appeal and accompanying papers to be filed in your office pursuant to Writ of Error of the Supreme Court of the United States to the City Court of Buffalo in the case of Joseph Radice, Plaintiff-in-Error against the People of the State of New York, Defendants-in-Error.

The attorneys of record in the case are as follows:

Henry W. Hill for Plaintiff-in-Error, whose Post-Office address is No. 906 Mutual Life Building, Buffalo, New York, and his residence address is No. 471 Linwood Avenue, Buffalo, New York, and Guy B. Moore, District Attorney of Erie County, New York, for Defendants-in-Error, whose office is at the City and County Hall in the City of Buffalo, New York, and who resides at No. 114 Bedford Avenue, Buffalo, New York.

Kindly advise me of its receipt. Very truly yours, George W. Reibold, Chief Clerk of the City Court of Buffalo. [Seal of City Court of Buffalo.]

Return to the Writ of Error.

STATE OF NEW YORK,
City Court of Buffalo, ss:

I, George W. Reibold, Chief Clerk of the City Court of Buffalo in the State of New York, by virtue of the Writ of Error from the Supreme Court of the United States to the City Court of Buffalo granted by Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals, which is the highest Court of the State of New York, on the 21st day of November, 1922, in the case of the People of the State of New York against Joseph Radice, and in obedience thereto, do hereby certify that the Appeal Book hereto attached with its cover marked "A" and containing an index in Roman, pages I to VII inclusive and also containing printed pages numbered from 1 to 221 inclusive, with the insert on page 219 of the words "and of the order allowing an appeal to the Court of Appeals," is a full,

true and complete duplicate copy of the printed record used upon the hearing of said cause in said Court of Appeals and a true and complete transcript of the remittitur of said Court of Appeals to the City Court of Buffalo marked "B" containing the proceedings of said Court of Appeals in said cause of action and a true and complete transcript of the Judgment of the City Court of Buffalo duly entered in said action marked "C" by the City Court of Buffalo upon said Remittitur as the same remain of record and on file in the office of the Clerk of said City Court of Buffalo.

And I, George W. Reibold, Chief Clerk of the City Court of Buffalo do also certify to and make return of the affidavit of Henry W. Hill verified on the 11th day of November, 1922, marked "E" as to no opinion in the Court of Appeals of the State of New York nor in the Appellate Division of the Supreme Court in and for the Fourth Department in said case, the assignment of errors of said Plaintiff-in-Error marked "F," the original prayer of plaintiff in-error for reversal of judgment marked "G," the petition for writ of error marked "H," a copy of the bond on the writ of error with its approval marked "I," the order allowing the writ of error from the Supreme Court of the United States to the City Court of Buffalo marked "J," the original writ of error from the Supreme Court of the United States to the City Court of Buffalo marked "K," the original citation on writ of error to defendants-in-error containing admission of service marked "L" and the certificate of the City Court of Buffalo as to the lodgment with him as such Clerk of the original and copies of papers transmitted herewith marked "M," of which are included in this return and attached hereto.

In testimony whereof I have caused the seal of said City Court of Buffalo to be hereto affixed in the City of Buffalo in the State of New York on the 18th day of December in the year of our Lord one thousand nine hundred and twenty-two. George W. Reibold Chief Clerk of the City Court of Buffalo, in the State of New York.

[Seal of City Court of Buffalo.]

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at Court of Appeals Hall in the City of Albany, on the 12th day of July in the year of our Lord one thousand nine hundred and twenty-two, before the Judges said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding R. M. Barber, Clerk.

Remittitur.

[July 13th, 1922.]

[Title Omitted.]

Be it remembered, that on the 27th day of May, in the year of our Lord one thousand nine hundred and twenty-two, Joseph Ra

the appellant in this cause, came here into the Court of Appeals, by Henry W. Hill, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department, affirming the judgment of correction of the City Court of Buffalo, and The People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Guy B. Moore, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Henry W. Hill of counsel for the appellant, and submitted by counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the City Court of Buffalo, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the City Court of Buffalo before the judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said City Court of Buffalo before the judges thereof, &c. (Signed) R. M. Barber, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

Albany, July 13, 1922.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto. (Signed) R. M. Barber, Clerk. (Seal.)

[File endorsement omitted.]

In the City Court of Buffalo.

At a term of the City Court of Buffalo held in and for said City, a
the City Court Building, in the City of Buffalo, N. Y., on the 30t
Day of August, 1922.

Present: Hon. George W. Woltz, City Court Judge.

[Title omitted.]

Judgment on Remittitur.

The above entitled action having been duly and regularly brough
to trial in this court on information and warrant duly issued thereo
whereby the said defendant was duly charged with having unla
fully violated and omitted to comply with the provisions of Sectio
161 of Article 12 of an act of the Legislature of the State of Ne
York, entitled "An Act relating to Labor, constituting Chapter
of the Consolidated Laws," and being Chapter 36, Laws of 1909,
amended, said trial having been duly held before Hon. Albert
Hartzell, City Court Judge, on the 29th day of January, 1918, wit
out a jury, and said court having thereafter and on October 15, 19
rendered its judgment against defendant, finding him guilty of sa
crime, and thereafter and on said 15th day of October, 1918, havi
entered its judgment upon such conviction, imposing a fine of twen
dollars ($20.00) against said defendant, and said defendant havi
thereafter presented his affidavit to the Erie County Judge for allo
ance of an appeal from said judgment of conviction, and thereup
said appeal to said County Court having been duly allowed on
cember 2, 1918, and thereafter defendant's said appeal having be
duly argued before Hon. Philip A. Laing, Erie County Judge, a
said County Court having on March 26, 1919 affirmed said jud
ment of conviction, and thereafter and on July 25, 1919, defenda
having appealed from said judgment of conviction and from sa
judgment of the County Court of Erie County affirming said jud
ment of conviction, to Supreme Court, Appellate Division, Four
Department, and thereafter and on the 13th day of March, 192
said last mentioned appeal having been duly argued before s
Supreme Court, Appellate Division, Fourth Department, and the
after and on May 2, 1922, and said Supreme Court, Appellate
vision, Fourth Department having unanimously affirmed said ju
ment of conviction, and thereafter defendant having made his m
tion to the said Supreme Court, Appellate Division, Fourth Depa
ment, for leave to appeal to the Court of Appeals, State of New Yo
and said Appellate Division having on May 17, 1922 duly allow
said defendant to appeal to the said Court of Appeals, and certifyi
in its opinion a question of law was involved which ought to be
viewed by said Court of Appeals, and defendant having thereaf
and on the 27th day of May, 1922, duly perfected his appeal to s
Court of Appeals herein, and thereafter said appeal having be

duly argued before said Court of Appeals on the part of the appellant and duly submitted on the part of the respondent, and thereafter and on the 12th day of July, 1922, said Court of Appeals having by its judgment and order duly entered in the office of the Clerk of the said Court of Appeals affirmed said judgment of conviction, and having ordered that the record thereof and proceedings therein be remitted to said City Court of Buffalo;

Now on reading and filing the record of appeal in the above entitled action in the said Court of Appeals of the State of New York in the above entitled action, bearing date of July 13, 1922, and on motion of Guy B. Moore, District Attorney of Erie County, it is

Ordered and adjudged that said judgment and order of the Court of Appeals of the State of New York in the above entitled action made and entered in the Clerk's office of the said Court of Appeals of the State of New York on the 12th day of July, 1922, be, and the same hereby is, made a judgment of this court. George W. Woltz.

[File endorsement omitted.]

City Court of Buffalo.

[Title omitted.]

Affidavit of no Opinion.

[Filed Nov. 11, 1922.]

STATE OF NEW YORK,
County of Erie,
City of Buffalo, ss:

Henry W. Hill, being duly sworn, deposes and says that he is an attorney and counsellor at law of the State of New York, and he is also an attorney and counsellor of the Supreme Court of the United States; that he was the attorney for Joseph Radice, appellant above named in the Court of Appeals of the State of New York and still is the attorney for said Joseph Radice; that deponent argued the case for said Joseph Radice, who was appellant in the above entitled action in the Court of Appeals of the State of New York and that said Court of Appeals rendered its decision of affirmance on the 12th day of July, 1922, but that it handed down no opinion at the time of the rendition of its said judgment of affirmance, nor did the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Department hand down any opinion with the rendition of its judgment of affirmance of the conviction of said Joseph Radice on the 3rd day of May, 1922.

Deponent further says that the only opinion or memorandum in the case of the People of the State of New York against Joseph Radice is that written by Judge Philip A. Laing, County Judge of Erie County, who heard the appeal from the City Court of Buffalo to the County Court of Erie County which memorandum of opinion is included in the printed record of the People of the State of New

York against Joseph Radice, which in the Supreme Court of the United States is to be entitled Joseph Radice, plaintiff in error, against the People of the State of New York, defendants in error. Henry W. Hill.

Sworn to before me this 11th day of November, 1922. Denis C. Henington, Notary Public, Erie County, N. Y.

[File endorsement omitted.]

STATE OF NEW YORK:

City Court of Buffalo.

[Title omitted.]

Assignment of Errors.

[Filed Nov. 11, 1922.]

And now comes Joseph Radice, the appellant, herein also designated as plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Appeals of the State of New York in the above entitled matter there is manifest error and the plaintiff in error makes and files this his assignment of errors to wit:

First. The Court of Appeals of the State of New York erred in holding that the provisions of subdivision 3 of Section 161 of the Labor Law of New York enacted by Chapter 535 of the Laws of 1917 of the State of New York are not in conflict with Section 1 of Article 14 of the Amendments of the Constitution of the United States and in affirming the conviction of the plaintiff in error of the violation of said subdivision 3 of Section 161 of the said Labor Law and in affirming the judgment of the City Court of Buffalo in imposing a fine of $20.00 upon the plaintiff in error for the violation of such laws, for that the state of New York by and through the provisions of said subdivision 3 of Section 161 of the Labor Law, enacted by Chapter 535 of the Laws of 1917, assumes and seeks (1) to deprive the plaintiff in error and certain other citizens of the United States and of the State of New York of rights, privileges, and immunities secured to other citizens of the United States and of the said state; (2) to deprive the plaintiff in error and other citizens of the United States of liberty and property without due process of law; (3) to deprive and to deny to the plaintiff in error and certain citizens and persons within the jurisdiction of the State of New York, the equal protection of the law.

Second. The court erred in holding that by the provisions of said act the plaintiff in error is not deprived of rights, privileges, and immunities secured to other citizens of the United States and of the State of New York by the Federal Constitution and laws of the United States.

Third. The court erred in holding that by the provisions of said act the plaintiff in error is not deprived of liberty and property without due process of law.

Fourth. The court erred in holding that the provisions of said act do not deny to the plaintiff in error the equal protection of the law.

Fifth. The court erred in holding that the said act and the authority exercised thereunder and thereby authorized to be exercised thereunder is within the police powers of the legislature of the State of New York.

Sixth. The said Court of Appeals erred in holding that the provisions of said subdivision 3 of Section 161 of the Labor Law of New York, enacted by Chapter 535 of the Laws of 1917 of the State of New York, which reads as follows:

"3. In cities of the first and second class no female over the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any restaurant more than six days or fifty-four hours in any one week, or more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of any day. This subdivision shall, however, not apply to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor shall it apply to females employed in or in connection with the dining rooms and kitchens of hotels, or in or in connection with lunch rooms or restaurants conducted by employers solely for the benefit of their own employees."

and which provisions prohibit the employment of females in restaurants in cities of the first and second class in the State of New York before six o'clock in the morning and after ten o'clock in the evening, while the provisions of said act do not prohibit the employment of females in restaurants before six o'clock in the morning or after ten o'clock in the evening or at any other time within the twenty-four hours of the day and night in all other restaurants in the State outside of cities of the first and second class and while the provisions of said act do not apply in cities of the first and second class nor elsewhere in the State of New York to females employed in restaurants as singers and performers of any kind nor to attendants in ladies' cloak rooms and parlors nor to females employed in connection with the dining rooms and kitchens of hotels nor to females in lunch rooms or restaurants conducted by employers solely for the benefit of their own employers, to be within the police powers of the State of New York.

Seventh. The Court of Appeals erred in holding that the said provisions of said act do not unlawfully discriminate between those engaged in conducting as well as those employed in restaurants in cities of the first and second class and those engaged in conducting as well as those engaged in restaurants in all other cities and parts of the State of New York outside of cities of the first and second class and in also holding that said provisions of said act do not unlawfully dis-

criminate between the several classes of females employed in restaurants of the first and second class.

Eighth. The Court of Appeals erred in holding that the provisions of said act do not cast special burdens upon those engaged in conducting and upon those employed in restaurants in cities of the first and second class in the State of New York.

Ninth. The Court of Appeals erred in holding that the provisions of said act do not deprive the plaintiff in error of the right to earn a livelihood in the pursuit of a lawful and harmless business and occupation and of the liberty of contract in reference to said business.

Tenth. The Court of Appeals erred in holding that the provisions of said act are not in conflict with and in violation of the provisions of Section 10 of Article 1 of the Constitution of the United States in that said provisions prohibit the employment of females in restaurants in cities of the first and second class of the State of New York for more than nine hours in any one day or before six o'clock in the morning or after ten o'clock in the evening of any day and thereby deprive the plaintiff in error and citizens of the right to contract with each other for the pursuit of a lawful occupation and such statutory provisions also prohibit the continuance and completion of a contract of employment existing between the plaintiff in error and one Anna Smith, when said act by its terms took effect on October 1st, 1917, and the provisions of said act also prohibit the continuance and completion of all other contracts between the plaintiff in error and all other employes who contracted to perform such services in his said restaurant in Buffalo which is a city of the first class before six o'clock in the morning and after ten o'clock in the evening of any day.

Eleventh. The Court of Appeals erred in affirming the judgment of the City Court of Buffalo which denied the motion of the plaintiff in error at the conclusion of the testimony that he be acquitted of the offense charged against him and be discharged from custody on the several grounds stated and particularly on the ground that said act of the State of New York is in conflict with and in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and also in conflict with and in violation of Section 10 of Article 1 of the Constitution of the United States.

Twelfth. The Court of Appeals erred in affirming the order and judgment of the Appellate Division of the Supreme Court for the Fourth Department of the State of New York, which affirmed the order and judgment of the County Court of Erie County, which affirmed the judgment of the City Court of Buffalo convicting the plaintiff in error of the violation of said act and imposing a fine upon him pursuant to the provisions of Section 1275 of the Penal Law of the State of New York.

Thirteenth. The Court of Appeals erred in ordering judgment remanding the record and proceedings in this case to be remitted to the City Court of Buffalo there to be proceeded upon according to law.

Fourteenth. That the Appellate Division of the Supreme Court f the State of New York for the Fourth Department erred in hold- g that the provisions of said act were not in conflict with and in iolation of Section 1 of the 14th Amendment of the Constitution f the United States for the reasons hereinbefore stated in para- raphs "First" to "Tenth" inclusive, which are herein referred to nd made a part of this assignment of error.

Fifteenth. That the County Court of Erie County of the State f New York erred in holding that the provisions of said act were ot in conflict with and in violation of Section 1 of the 14th Amend- ent of the Constitution of the United States for the reasons here- nbefore stated in paragraphs "First" to "Tenth" inclusive, which re herein referred to and made a part of this assignment of error.

Sixteenth. The City Court of Buffalo in the State of New York rred in holding that the provisions of said act were not in conflict ith and in violation of Section 1 of the 14th Amendment of the onstitution of the United States for the reasons hereinbefore stated paragraphs "First" to "Tenth" inclusive, which are herein re- rred to and made a part of this assignment of error.

Seventeenth. That the Appellate Division of the Supreme Court f the State of New York for the Fourth Department erred in hold- g that the provisions of said act were not in conflict with and in iolation of Section 10 of Article 1 of the Constitution of the nited States for the reasons hereinbefore stated in paragraph Tenth" hereof, which is herein referred to and made a part of is assignment of error.

Eighteenth. That the County Court of Erie County of the State f New York erred in holding that the provisions of said act were ot in conflict with and in violation of Section 10 of Article 1 of he Constitution of the United States for the reasons hereinbefore ated in paragraph "Tenth" hereof, which is herein referred to and ade a part of this assignment of error.

Nineteenth. The City Court of Buffalo, New York, erred in hold- g that the provisions of said act were not in conflict with and in iolation of Section 10 of Article 1 of the Constitution of the United tates for the reasons hereinbefore stated in paragraph "Tenth" ereof, which is herein referred to and made a part of this assign- ent of error.

Twentieth. The Appellate Division of the Supreme Court of he State of New York for the Fourth Department erred in affirm- g the judgment of the City Court of Buffalo which denied the otion of the plaintiff in error at the conclusion of the testimony hat he be acquitted of the offense charged against him and be dis- harged from custody on the several grounds stated and particu- rly on the ground that said act of the State of New York is in onflict with and in violation of the provisions of Section 1 of the ourteenth Amendment of the Constitution of the United States nd also in conflict with and in violation of Section 10 of Article 1 f the Constitution of the United States.

Twenty-first. The County Court of Erie County of the State of

New York erred in affirming the judgment of the City Court of Buffalo which denied the motion of the plaintiff in error at the conclusion of the testimony that he be acquitted of the offense charged against him and be discharged from custody on the several grounds stated and particularly on the ground that said act of the State of New York is in conflict with and in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and also in conflict with and in violation of Section 10 of Article 1 of the Constitution of the United States.

Twenty-second. The Appellate Division of the Supreme Court of the State of New York for the Fourth Department erred in affirming the judgment of the County Court of Erie County, which affirmed the judgment of the City Court of Buffalo convicting the plaintiff in error of the violation of said act and imposing a fine upon him pursuant to the provisions of Section 1275 of the Penal Law of the State of New York.

Twenty-third. The County Court of Erie County of the State of New York erred in affirming the judgment of the City Court of Buffalo convicting the plaintiff in error of the violation of said act and imposing a fine upon him pursuant to the provisions of Section 1275 of the Penal Law of the State of New York.

Twenty-fourth. The City Court of Buffalo erred in convicting the plaintiff in error of the violation of said act and imposing a fine upon him pursuant to the provisions of Section 1275 of the Penal Law of the State of New York.

Dated November 11th, 1922. Henry W. Hill, Attorney for Appellant, Plaintiff in Error, 906 Mutual Life Building, Buffalo, New York.

[File endorsement omitted.]

[Title omitted.]

Prayer for Reversal.

[Filed Nov. 24, 1922.]

To the Honorable the Supreme Court of the United States:

And now comes Joseph Radice, the plaintiff in error, and prays for the reversal of the judgment of the Court of Appeals of the State of New York in the criminal action brought by the People of the State of New York, respondents, against Joseph Radice, defendant and appellant, which judgment was entered in the office of the Clerk of the Court of Appeals on the 12th day of July, 1922, unanimously affirming the judgment of the Appellate Division of the Supreme Court of the State of New York for the Fourth Department, and which said judgment of the Court of Appeals with the entire record in said case was remitted to the City Court of Buffalo, to be proceeded with according to law, and said Joseph Radice, defendant and appellant, also prays for reversal of the order and judgment of affirm-

ance in said action of the Appellate Division of the Supreme Court of the State of New York for the Fourth Department entered in the office of the Clerk of said Appellate Division on or about the 3rd day of May, 1922, unanimously affirming the judgment of the County Court of Erie County in said action, and said Joseph Radice, defendant and appellant, also prays for reversal of the judgment in said action of the County Court of Erie County, New York, entered in the office of the Clerk of the County of Erie, New York, on the 26th day of March, 1919, which affirmed the judgment of the City Court of Buffalo, convicting the said Joseph Radice of the violation of subdivision 3 of Section 161 of the Labor Law of the State of New York, enacted by Chapter 535 of the Laws of 1917, and said Joseph Radice, defendant and appellant in said action, also prays for reversal of the judgment of the City Court of Buffalo, New York, entered in the office of the Clerk of said Court on the 15th day of October, 1918, and said Joseph Radice also prays for a reversal of the judgment of the City Court of Buffalo, entered upon the remittitur of the Court of Appeals in this action on the 30th day of August, 1922, which last mentioned judgment is the judgment of the Court of Appeals, the highest court of the State of New York. Henry W. Hill, Attorney for Joseph Radice, Plaintiff in Error, 906 Mutual Life Building, 210 Pearl Street, Buffalo, New York.

[File endorsement omitted.]

STATE OF NEW YORK.

Supreme Court

APPELLATE DIVISION, Fourth Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondents,

vs.

JOSEPH RADICE,
Appellant.

STATEMENT UNDER RULE 41.

Defendant-Appellant herein was arrested on the 18th day of December, 1917, and brought before a Magistrate or Judge of the City Court of Buffalo on a charge contained in an Information verified on the 13th day of December, 1917, charging said defendant with a violation of the provisions of Section 161 of Article 12 of an act of the Legislature of this State, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws," being Chapter 36, Laws of 1909, as amended (by Chapter 535 of the Laws of 1917) in that he as partner in the restaurant known as T. R. & C. Restaurant at 635 Main Street, City of Buffalo, County of Erie, did employ and permit one Anna Smith of 592 Niagara Street, City of Buffalo, County of Erie, a woman to work in the said restaurant as a waitress after

10 P. M., to wit—11:03 P. M. The defendant pleaded not guilty to said charge and also interposed a formal answer to said charge on the 29th
6 day of Jaanuary, 1918. The case was continued before Judge Albert A. Hartzell, a Judge of the City of Buffalo, and on October 15th, 1918, the defendant was found guilty of violating said Act and fined twenty ($20) dollars, which the defendant paid, and thereafter he applied to the County
7 Judge of Erie County for an allowance of an appeal from said judgment of the City Court of Buffalo to the County Court of Erie County, which appeal was allowed by the Honorable Philip A. Laing, County Judge of Erie County on the 2nd day of December, 1918. Thereafter and on or
8 about , a return was made by Judge Albert A. Hartzell to the County Court of Erie County. Thereafter and on March 1st, 1919, said appeal was argued before the Honorable Philip A. Laing, County Judge of Erie County, and he made a decision on the 26th day
9 of March, 1919, by an order duly made on that day by the County Court of Erie County, affirming said judgment of conviction of said defendant, Joseph Radice. Thereafter and on the 25th day of July, 1919, the said defendant, Joseph Radice appealed from the judgment of the Erie
10 County Court, affirming the judgment of the City Court of Buffalo, whereby said defendant was convicted, as aforesaid, to the Appellate Division of the Supreme Court in the Fourth Department of the State of New York.

There appeared for the People of the State of New York in the City Court of Buffalo, Frederick H. Cunningham, Esq., First Assistant Counsel of the State Labor Department and in the County

Court there appeared for the People William W. Dickinson, Assistant District Attorney of Erie County.

There appeared as attorney for the defendant in the City Court of Buffalo and in the County Court of Erie County, New York, Henry W. Hill, of Buffalo, New York.

Otherwise no change in the parties or attorneys has taken place since the commencement of said action.

HENRY W. HILL,
Attorney for Defendant-Appellant.

NOTICE OF APPEAL.

STATE OF NEW YORK,
COUNTY COURT—County of Erie.

The People of the State of New York,
Respondents,
against
Joseph Radice,
Defendant-Appellant.

To Honorable John H. Meahl, Clerk of the County of Erie, New York, and to Honorable Guy B. Moore, District Attorney of Erie County, New York:

Sirs:

Please Take Notice That the Defendant-Appellant, Joseph Radice, hereby appeals to the

Appellate Division of the Supreme Court, in and for the Fourth Department of the State of New York, from the Judgment of the County Court
16 of Erie County, made and entered on the 26th day of March, 1919, affirming the judgment of the City Court of Buffalo, made and entered on the 15th day of October, 1918, convicting the said Defendant-Appellant, Joseph Radice, of the violation of Subdivision 3 of Section 161 of the Labor
17 Law of the State of New York, enacted by Chapter 535 of the Laws of 1917, and imposing a fine of $20, upon the said Defendant-Appellant, pursuant to the provisions of Section 1275 of the Penal Law of the State of New York.

Dated Buffalo, New York, July 25th, 1919.

18

HENRY W. HILL,
Attorney for Defendant-Appellant,
Office and Postoffice Address,
906 Mutual Life Building,
210 Pearl Street,
Buffalo, New York.

19

20

PAPERS ON APPEAL TO COUNTY COURT.

STATE OF NEW YORK,
COUNTY COURT—COUNTY OF ERIE. 21

THE PEOPLE OF THE STATE OF NEW YORK

against

JOSEPH RADICE,

Defendant. 22

To the Honorable Philip A. Laing, County Judge of Erie County in the State of New York:

Joseph Radice, the defendant, above named, 23
hereby applies to the Honorable Philip A. Laing, County Judge of Erie County on his annexed affidavit, showing alleged errors on the trial committed of said defendant for an allowance of an appeal to the County Court of Erie County from said judgment of the City Court of Buffalo, made and entered on the 15th day of October, 1918, 24
whereby said defendant was convicted of violating and omitting to comply with the provisions of Section 161 of Article 12 of the Act of the Legislature of New York, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws," being Chapter 36 of the Laws of 25
1909, as amended by Chapter 535 of the Laws of 1917.

Dated December 2nd, 1918.

HENRY W. HILL,
Attorney for Defendant.

AFFIDAVIT ON APPEAL.

COUNTY COURT—ERIE COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

JOSEPH RADICH,

Defendant.

STATE OF NEW YORK
COUNTY OF ERIE
City of Buffalo

Joseph Radice, being duly sworn, deposes and says that he is the defendant above named and that at all the times hereinafter mentioned he was and still is engaged in conducting a restaurant as the Rotisserie at 635 Main Street, Buffalo, New York, and that on or about the 17th day of December, 1917, he was summoned before the City Court of Buffalo on the charge that "on or about the 10th day of November, 1917, at the City of Buffalo in the County of Erie and State of New York, he did unlawfully violate and omit to comply with the provisions of Section 161 of Article 12 of the Act of the Legislature of the State, entitled "An Act relating to Labor, constituting chapter 31 of the Consolidated Laws," being chapter 36, of the Laws of 1909, as amended in that he as partner in the restaurant known as T. R. & C. Restaurant at 635 Main Street, City of Buffalo, County of Erie, did employ and permit one Anna Smith of 592 Niagara Street, City of Buffalo, County of Erie and State of New York, a woman, to work in said restaurant as a waitress after 10 P. M., to wit: 11:03 P. M."

Deponent further says that this defendant filed a formal answer to such information, drawing in question the constitutionality of such Act as herein set forth. 31

Deponent further says that at the conclusion of the evidence the defendant moved that the Court render judgment, acquitting the defendant of said charge and directing his release from custody on the ground that the said act, under which defendant was being prosecuted, was null and void as being repugnant to and in violation of certain specified provisions of the Constitution of the United States as well as repugnant to and in violation to certain provisions of the Constitution of the State of New York, to which motion, fully set forth in the stenographer's minutes taken upon the trial, reference is herein made. 32 33

The deponent further says that subsequently thereto and on the 15th day of October, 1918, the Court denied the motion of counsel to discharge defendant on all the grounds stated and gave the defendant an exception to its ruling on each of the grounds upon which the motion was based and decided that the statute in question was constitutional, and the judgment further provided that the defendant was guilty of the offense charged against him, as aforesaid and the Court imposed a fine of $20 upon defendant under the provisions of section 1275 of the Penal Law of the State. 34 35

The deponent further says that the Court committed the following errors in the proceedings and conviction of the said defendant as aforesaid and imposing upon him a fine of $20 under said

section 1275 of the Penal Law of the State of New York.

First: That the facts proved upon said trial do not constitute a crime.

Second: That chapter 535 of the laws of 1917, in limiting the hours of labor or women employed in restaurants in cities of the first and second class to nine hours in any one day and absolutely prohibiting their employment before six o'clock in the morning and after ten o'clock in the evening of any day, while not applying to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor applying to females employed in dining rooms and kitchens of hotels, nor to those employed in lunch rooms or restaurants, conducted by employers for the benefit of their employees, is null and void; in that the foregoing provisions of chapter 535 of the Laws of 1917 are repugnant to and in violation of that part of Section 1 of Article 14 of the amendments to the Constitution of the United States, which reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," in that the state of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and property without due process of law and denied to such citizens within its jurisdiction the equal protection of the laws by unjustly discriminating

between different classes of its citizens, namely between females employed in restaurants in the cities of the first and second class as distinguished from females employed in restaurants in all other parts of the state outside of the cities of the first and second class and also as distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak rooms and parlors and females employed in dining rooms and kitchens of hotels and in lunch rooms, or restaurants conducted by employers for the benefit of their employees, which females so employed may work at any and all hours, night or day without limit. Said act is unconstitutional, discriminatory legislation and is therefore null and void and the Court committed error in deciding otherwise and that said act was a valid and constitutional enactment and in imposing judgment upon the defendant for violating the provisions thereof.

Third: That the said provisions of the foregoing act, Chapter 535 of the Laws of 1917, are also repugnant to and in violation of Section 1 of Article 1 of the Constitution of the State of New York, which reads as follows: "No member of this State shall be disfranchised, or deprived of any of the rights or privileges, secured to any citizen thereof, unless by the law of the land, or the judgment of his peers," and also that part of Section 6 of Article 1 of the Constitution of the State of New York, which reads as follows: "No person * * * shall be deprived of life, liberty or property without due process of law" in that said provisions of said act transcend the constitutional rights of its citizens freely to pursue lawful oc-

cupations by abridging their personal liberty and limiting their freedom to work as long as they please within general limits applicable to all alike
46 for adult women are citizens and entitled to all the rights of citizenship under the said constitutional provisions, which are denied to woman by the said provisions of Chapter 535 of the Laws of 1917, in that females are absolutely prohibited from employment in certain restaurants before
47 six o'clock in the morning and after ten o'clock in the evening of any day no matter how short such employment may be and therefore said act is null and void.

The Court committed error in deciding otherwise and that said act was a valid and constitu-
48 tional enactment and in imposing judgment upon defendant for violating the provisions thereof.

Fourth: The said provisions of Chapter 535 of the Laws of 1917 are repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as fol-
49 lows: "No state * * * shall pass any * * * law impairing the obligations of contracts" in that said provisions prohibit the employment of females in restaurants in cities of the first and second class for more than nine hours in any one day, or before six o'clock in the morning, or after
50 ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other and such statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith, when said act by its terms took effect on October first in the year 1917, and such provisions also prohibit the con-

tinuance and completion of all other contracts between said defendant and all other female employees, who may have contracted to perform such services for said defendant in his said restaurant 51
in Buffalo, which is a city of the first class, for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and therefore said act is null and void.

52 The Court committed error in deciding otherwise and that said act was a valid and constitutional enactment and in imposing judgment upon defendant for violating the provisions thereof.

Fifth: The Court committed error in denying defendant's motion at the conclusion of the testimony 53
that he be acquitted of the offense charged against him and be discharged from custody on the several grounds, which are fully set forth in the stenographer's minutes of the trial and made a part hereof to which rulings of the Court, the defendant duly excepted. 54

Sixth: That on the trial it was established by a preponderence of evidence:

1. That the defendant is and was on November 10th, 1917, a citizen of the United States engaged in operating a restaurant at 635 Main Street in the City of Buffalo, New York, which is a city of 55
the first class in the State of New York, and had been so engaged for several months prior thereto.

2. That the defendant prior to October 1st, 1917, had entered into a contract for the employment of one Anna Smith in his said restaurant as waitress at 635 Main Street in Buffalo, New York, after ten o'clock at night and the entering into

said contract by said Anna Smith was an entirely voluntary act on her part and said employment was not harmful to her, but healthful.

56 3. That said restaurant was under the supervision of the Health Department of the City of Buffalo and found to be in a sanitary and hygienic condition on November 10th, 1917, and subsequently thereto and prior thereto.

57 4. That restaurants in the cities of the first and second class in the State of New York are subject to the inspection and supervision of the state and municipal health authorities and are maintained in a sanitary and hygienic condition.

5. That it is now established by a preponder-
58 ence of evidence that such employment of females before six o'clock in the morning and after ten o'clock in the evening in restaurants in cities and after ten o'clock in the evening in restaurants in cities of the first and second class of the State of New York, was not and is not harmful to them,
59 but is an healthful employment.

6. That it is now established that employment of females in restaurants in cities of the first and second class in the State of New York before six o'clock in the morning, or after ten o'clock in the evening prior to November 10th, and subsequently
60 thereto was not detrimental to the public health nor injurious to the morals of such employees, nor to the people of the cities of the first and second class in the State of New York.

7. That it was also established upon the trial by a preponderence of evidence that the employment of females in restaurants in cities of the first and second class in the State of New York, before

six o'clock in the morning and after ten o'clock at night, but not to exceed 54 hours in any one week, was a normal occupation for such females and not injurious to them, nor harmful to the public. 61

That the establishment of facts contained in the record and briefly set forth in the foregoing subdivisions one to seven inclusive of paragraph sixth hereof demonstrates the absence of conditions in cities of the first and second class of the State of New York in October, 1917, prior thereto and thereafter warrantying, under either the foregoing provisions of the State Constitution or under the foregoing provisions of the Federal Constitution of the United States, the enactment of said Statute (Ch. 535 of the Laws of 1917) and the Court committed error in not deciding said statute to be repugnant to and in violation of Sections 1 and 6 of Article 1 of the Constitution of the State of New York, and also repugnant to and in violation of both Section 10 of Article 1 and Section 1 of Article 14 of the Amendments of the Constitution of the United States and therefore null and void and in not acquitting the said defendant and in not discharging him from custody. 62 63 64

Seventh: That on all the evidence and motions made at the conclusion of the trial, the Court committed error in not acquitting the defendant of the said charge preferred against him and in not discharging defendant from custody, to all of which rulings of the Court, this defendant duly excepted. 65

Deponent further says that on the 15th day of October, 1918, he was adjudged guilty by said

City Court of Buffalo of violating and omitting to comply with the provisions of Section 161 of Article 12 of the Act of the Legislature of the
66 State, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws," being Chapter 36 of the Laws of 1909, as amended by Chapter 535 of the Laws of 1917, and fined under Section 1275 of the Penal Law of the State of New York.

67 JOSEPH RADICE.

Subscribed and sworn to before me
this 2nd day of December, 1918.
CORA M. SCOTT,
Notary Public in and
for Erie County, N. Y.
68

ENDORSED.

(SAME TITLE)

69

I hereby allow the within appeal to the County Court of Erie County, from the judgment of conviction of said defendant by the City Court of Buffalo.

Dated December 2nd, 1918.

70 PHILIP A. LAING,
Erie County Judge.

JUDGMENT OF AFFIRMANCE ON APPEAL FROM SPECIAL SESSIONS.

At a Term of the County Court of Erie County held at the City and County Hall in the City of Buffalo, N. Y., on the 26th day of March, 1919. 71

Present: Hon. Philip A. Laing, County Judge.

(SAME TITLE) 72

The appeal to this Court from the judgment of conviction in the above entitled action having been regularly brought on for argument on the merits at this term of Court; and argument having been duly had thereon, Mr. Henry W. Hill, 73 appearing in behalf of the appellant, and Mr. William W. Dickinson for the District Attorney of Erie County appearing in behalf of the respondents, and after due deliberation it is

ADJUDGED, That the judgment of conviction herein be and the same is hereby affirmed. 74

Granted, March 26, 1919.

JAMES V. WALSH,
Special Deputy Clerk.

PHILIP A. LAING,
County Judge. 75

MEMORANDUM OR OPINION.

(SAME TITLE)

76 Appearances: William W. Dickinson, Esq., Attorney for the People; Frederick H. Cunningham, Esq., of Counsel; Henry W. Hill, Esq., Attorney for Defendant.

This action was brought by the State Industrial
77 Commission against the defendant for violation of Section 161 of Article 12 of the Labor Law. The defendant was charged with violation of said law in that on November 10th, 1917, after ten o'clock P. M. at his restaurant situated at 635 Main Street, Buffalo, he employed one Anna Smith, an
78 adult woman. The Trial Court found that the defendant ran a restaurant at said place and did on the date named employ said Anna Smith contrary to the provisions of said statute. The only defense interposed in the Trial Court was that the statute was unconstitutional, and the validity of
79 the statute on the ground of unconstitutionality is the only question raised here.

Before the Trial Court the defendant put in considerable evidence in an effort to establish as a matter of fact that work in a restaurant in the night time is not injurious to women. The ques-
80 tion to which such evidence was addressed was not strictly speaking an issue in this action. The only issue in the action was as to whether or not there had been a violation of the statute. The only relevancy of such evidence, if it had any, was its bearing on the question as to whether or not the night employment of women in restaurants was a proper subject for legislative action. The evidence introduced in behalf of the defendant

did not raise an issue to be passed upon by the Trial Court. In passing upon the question as to whether or not this statute is unconstitutional, the Court must determine whether or not the 81
Legislature had reasonable grounds to believe that such employment is harmful to women; it necessarily follows therefore that the opinions of physicians, restaurant keepers and persons who have been employed in restaurants, as to the beneficial effects of restaurant employment in the 82
night time could have no controlling effect upon the judgment of the Trial Court and can have no such effect here.

It has been settled that the Legislature had the right to stop the night employment of women in factories; People vs. Schweinler Press, 214 N. Y. 83
395. It has also been settled that the Legislature had a right to stop the night employment of women in mercantile establishments; People ex rel John Krohn vs. Warden, 215 N. Y. 701. It is not apparent to me that there is any marked distinction between night work in mercantile establish- 84
ments and night work in restaurants. It will probably be generally conceded that there is quite a marked difference between night work in factories, and night work in mercantile establishments. Notwithstanding this seeming indifference in those two kinds of work, the Legislature has 85
seen fit to place the ban not only upon the night employment of women in factories, but also upon the night employment of women in mercantile establishments, and the Court of Appeals has upheld the legislation affecting both of those industries. If the night employment of women in mercantile establishments is a proper subject for legislative action, I am of opinion that it cannot be

determined as a matter of law that such employment in restaurants is not a proper subject for legislative action. At any rate such determination, if
86 it is to be made, should be made by the Appellate Division or the Court of Appeals, and not by this court.

My conclusion therefore is that the judgment appealed from should be affirmed.

87 PHILIP A. LAING,
County Judge.

INFORMATION.

88 CITY COURT—City of Buffalo — County of Erie.

The People of the State of New York,
On the Information of C. William Johnson, 89 Alexander
89 Place,

vs.

Joseph Radice,
635 Main Street,

90 Information 85945.

STATE OF NEW YORK }
County of Erie } ss
City of Buffalo }

C. William Johnson, of 89 Alexander Pl., Buffalo, aged adult years, occupation mercantile inspector, being duly sworn, deposes and says:

That on or about the 10th day of November in the year of our Lord one thousand nine hundred seventeen at the City of Buffalo in this County Erie Joseph Radice did unlawfully violate and omit to comply with the provisions of Section 161 of Article 12 of an Act of the Legislature of this State, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws," being Chapter 36, Laws of 1909, as amended in that he as partner in the restaurant known as T. R. & C. Restaurant at 635 Main Street, City of Buffalo, County of Erie, did employ and permit one Anna Smith of 592 Niagara Street, City of Buffalo, County of Erie, a woman, to work in the said restaurant as a waitress after 10 P. M., to wit: 11:03 P. M.

WHEREFORE, Your informant prays that a warrant may issue for the arrest of the said Joseph Radice and that he be dealt with according to law.

C. WILLIAM JOHNSON.

Sworn to before me this 13th
day of December, 1917.

EDWIN GAUS FLANGEN,
Deputy Clerk of City Court of Buffalo.

Witnesses: C. William Johnson, 89 Alexander Place; Anna Smith, 592 Niagara Street.

WARRANT FOR VIOLATION, CHAPTER 36, LAWS OF 1909.

96 Erie County, City of Buffalo, ss:

In the Name of the People of the State of New York.

To any Sheriff, Constable or Policeman of the City of Buffalo, County of Erie:

97 Information upon oath having been this day laid before me that the crime of violation of Chapter 36, Laws of 1909, has been committed, and accusing Joseph Radice, defendant, thereof; you are therefore commanded forthwith to arrest the above-named defendant Joseph Radice, and bring
98 him before me, at City Court of Buffalo, or in my absence or inability to act, before the nearest or most accessible magistrate in this City and County.

Dated at the City of Buffalo, County of Erie, this 14th day of December, 1917.

99 THOMAS H. NOONAN,
Judge of the City Court of Buffalo.

CHAPTER 535 OF THE NEW YORK LAWS OF
100 ## THE YEAR 1917.

An Act to amend the Labor Law, in relation to the hours of labor of women in restaurants.

Became a law May 17, 1917, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and sixty-one of Chapter Thirty-six of the Laws of nineteen hundred and nine, entitled "An Act relating to Labor, constituting Chapter Thirty-one of the consolidated Laws," as amended by Chapter Three Hundred and Eighty-seven of the Laws of nineteen hundred and ten, Chapter Eight Hundred and Sixty-six of the Laws of nineteen hundred and eleven, Chapter Four Hundred and Ninety-three of the Laws of nineteen hundred and thirteen, Chapter Three Hundred and Thirty-one of the Laws of nineteen hundred and fourteen and Chapter Three Hundred and Eighty-six of the Laws of nineteen hundred and fifteen, is hereby amended by adding thereto, after Subdivision Two thereof, a new subdivision, to be Subdivision Three, and to read as follows:

3. In cities of the first and second class no female over the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any restaurant more than six days or fifty-four hours in any one week, or more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of any day. This subdivision shall, however, not apply to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor shall it apply to females employed in or in connection with the dining rooms and kitchens of, hotels or in connection with lunch rooms or restaurants conducted by employers solely for the benefit of their own employees.

Section 2. Present Subdivision Three of said section is hereby renumbered Subdivision Four.

Section 3. This act shall take effect October
106 first, nineteen hundred and seventeen.

CITY COURT'S RETURN.

107 (SAME TITLE)

To the County Court, Erie County:

The return of Hon. Albert A. Hartzell, a Judge of the City Court of Buffalo, to an appeal of the appellant herein, respectfully shows:

108 That the above named defendant, Joseph Radice, was arraigned before me on the 29th day of January, 1918, in the City Court of Buffalo on the charge of violating Section 161, Article 12 of an Act of the Legislature of this State, entitled "An Act relating to Labor, constituting Chapter
109 31 of the Consolidated Laws, being Chapter 36, Laws of 1909, as amended, in that he did on the 10th day of November, 1917, at the City of Buffalo, County of Erie and State of New York, as a partner in the restaurant known as T. R. & C. Restaurant at 635 Main Street, City of Buffalo,
110 County of Erie, did employ and permit one Anna Smith of 592 Niagara Street, City of Buffalo, County of Erie, a woman, to work in the said restaurant as a waitress after ten o'clock P. M., to wit: 11:03 P. M., at which date the trial of the action was duly begun.

The said defendant was arrested upon a warrant dated the 14th day of December, 1917, which

said warrant was duly issued upon information laid and deposition taken. The defendant was represented by his counsel, Hon. Henry W. Hill, and pleaded not guilty, and filed the annexed answer.

I thereupon proceeded with the trial, and after hearing the evidence of the People and of the defendant, which evidence is hereunto annexed and made a part of this return, and after due deliberation, the defendant was found guilty and convicted and sentenced to pay a fine of Twenty-Dollars.

All of which is respectfully submitted.

Dated, Buffalo, New York, November 25th, 1918.

ALBERT A. HARTZELL,
Judge of the City Court of Buffalo.

ANSWER.

CITY COURT OF BUFFALO.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondents,
vs.
JOSEPH RADICE,
Defendant.

The above-named defendant, Joseph Radice, hereby makes answer to the information filed in this Court charging him, the defendant, with the violation of and non-compliance with the provisions of Section 161 of Article 12 of the Act of the

Legislature of New York, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws" being Chapter 36 of the
116 Laws of 1909 as amended by Chapter 535 of the Laws of 1917, in that on or about the 10th day of November in the year 1917, "he (the defendant) as partner in the restaurant as T. R. & C. Restaurant at 635 Main Street, City of Buffalo, County of Erie, did employ and permit one Anna Smith, of
117 592 Niagara Street, City of Buffalo, County of Erie, a woman, to work in said restaurant as a waitress after 10 P. M., to wit: 11:03 P. M." as follows:

First. That the facts stated in said information do not constitute a crime.

118

Second: That said act, namely, Chapter 535 of the Laws of 1917, in limiting the hours of labor of women employed in restaurants in cities of the first and second class to nine hours in any one day and absolutely prohibiting their employment
119 before six o'clock in the morning and after ten o'clock in the evening of any day, while not applying to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor applying to females employed in dining rooms and kitchens of hotels, nor to those employed in lunch
120 rooms or restaurants, conducted by employers for the benefit of their employees, is null and void in that the foregoing provisions thereof are repugnant to and in violation of that part of Section 1 of Article 14 of the Amendments to the Constitution of the United States, which reads as follows: "No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person 121
within its jurisdiction the equal protection of the laws," in that the State of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and propertty without due
process of law and denied to such citizens within 122
its jurisdiction the equal protection of the laws by unjustly discriminating between different classes of its citizens, namely, between females employed in restaurants in the cities of the first and second class as distinguished from females
employed in restaurants in all other parts of the 123
state outside of the cities of the first and second class and also as distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak rooms and parlors and females employed in din-
ing rooms and kitchens of hotels and in lunch 124
rooms, or restaurants conducted by employers for the benefit of their employees which females so employed may work at any and all hours, night or day without limit. Said Act is unconstitutional discriminatory legislation and is therefore null and void.

125

Third: That the said provisions of the foregoing Act, Chapter 535 of the Laws of 1917, are also repugnant to and in violation of Section 1 of Article 1 of the Constitution of the State of New York, which reads as follows: "No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the

judgment of his peers," and also that part of Section 6 of Article 1 of the Constitution of the State of New York, which reads as follows: "No per-
126 son * * * shall be deprived of life, liberty or property without due process of law" in that said provisions of said act transcend the constitutional rights of its citizens freely to pursue lawful occupations by abridging their personal liberty and limiting their freedom to work as long as they
127 please within general limits applicable to all alike for adult women are citizens and entitled to all the rights of citizenship under the said constitutional provisions, which are denied to women by the said provisions of Chapter 535 of the Laws of 1917, in that females are absolutely prohibited
128 from employment in certain restaurants before six o'clock in the morning and after ten o'clock in the evening of any day no matter how short such employment may be and therefore said Act is therefore null and void.

Fourth: The said provisions of Chapter 535 of
129 the Laws of 1917 are repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as follows: "No state * * * shall pass any * * * law impairing the obligations of contracts" in that said provisions prohibit the em-
130 ployment of females in restaurants in cities of the first and second class for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other and such statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith, when

said Act by its terms took effect on October first in the year 1917, and such provisions also prohibit the continuance and completion of all other contracts between said defendant and all other f 131
male employees, who may have contracted to pe
form such services for said defendant in his said restaurant in Buffalo, which is a city of the fi
class, for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and therefore 132
said act is null and void.

WHEREFORE the defendant, Joseph Radice, demands judgment sustaining his answer and discharging him from the charges set forth in said information.

133

Dated January 29th, 1918.

HENRY W. HILL,
Attorney for the Defendant.

134

CASE AND EXCEPTIONS.

(SAME TITLE)

Tried at Buffalo, New York, commencing January 29, 1918, before Hon. Albert A. 135
Hartzell, a Judge of the City Court of Buffalo.

Appearances: Frederick H. Cunningham, Esq., First Assistant Counsel of the State Labor Department, for the People.

Hon. Henry W. Hill for the defendant.

Charge: Violation of Section 161, Article 12,
136 Subdivision 3 of the Labor Law.

Plea: Not Guilty.

Mr. Hill: We have pleaded not guilty, and in addition thereto we will file an answer in which we shall raise certain constitutional questions.
137

The Court: Very well.

C. WILLIAM JOHNSON, being called and
138 sworn on behalf of the People, testified as follows:

DIRECT EXAMINATION by Mr. Cunningham:

Q. Mr. Johnson, what is your address? A. 89
139 Alexander Place.

Q. Are you a mercantile inspector connected with the State Industrial Commission? A. I am.

Q. Were you acting as such on November 10th, 1917? A. Yes.

Q. Did you on that date visit the premises
140 known as Joseph Radice & Company restaurant at 635 Main Street in the City of Buffalo? A. I did.

Q. Did you make an inspection there? A. I did.

Q. Did you see the defendant there? A. I did.

Q. On that occasion? A. I did.

Q. Do you know what his connection with the premises is? A. He said he was the proprietor.

Q. What? A. He said that he was one of the proprietors. 141

Q. Will you state to the Court what you found on your inspection in relation to a woman named Anna Smith? A. I found two women working there. That was about eleven o'clock in the evening. I asked him who they were, whether they were employed there and what connection they had— 142

Q. By him you mean the defendant, Mr. Radice? A. Yes. He said that one was a parnter in the business and the other was an employee. I asked him what reason he had for employing her after ten o'clock at night. He said that he employed her up until ten o'clock and then she could work herself later if she wanted to. I told him that it was against the law to allow anyone to work after ten o'clock. He said that he didn't know anything about that, and didn't care. 143

Q. What was the exact hour when you found Anna Smith at work as described? A. Well, it was about three minutes after eleven. 144

Q. P. M.? A. Yes.

Q. What was Anna Smith doing when you went in there? A. She was clearing off some tables in the dining room and carried the dishes out to the kitchen and then came back into the dining room and took some orders from customers that were seated at a table. 145

Q. Doing the general work of a waitress? A. Yes.

Q. Have any talk with Anna Smith in the presence of the defendant, Joseph Radice? A. Well, not exactly in the presence of Mr. Radice. I had a talk with her in the restaurant.

Q. But Mr. Radice was not present? A. He
146 was in the other part of the room by the cashier's desk.

Q. Did you subsequently repeat the conversation you had with Anna Smith to Mr. Radice? A. Yes.

Q. Relate that conversation you had with Mr.
147 Radice? A. I told him that I saw Anna Smith and that she said she was getting six dollars a week for her work there. I asked him if that was right, and he said it was.

Q. He said yes? A. Yes.

Q. Is Anna Smith here? A. Yes.

148 Q. Is this the woman you found there on the night in question? A. Yes.

Q. Now will you describe briefly, for the purpose of the record, the place where you found Anna Smith working? A. It was at the restaurant at No. 635 Main Street.

149 Q. How large a place? A. Oh, it is a room, I should judge, as large as this one.

Q. That is, indicating a room about thirty feet by thirty-five? A. Yes, perhaps longer.

The Defendant: Eighty feet long.

150 The Witness: In the front part is the cashier's desk on the right-hand side as you go in. Back of that are tables and chairs for guests to sit down in.

Q. Beyond that? A. In the rear of that is the kitchen.

Q. On the same floor? A. On the same floor.

Q. Did you on your inspection go through the

entire restaurant? A. I went through the entire restaurant.

Q. Into the kitchen? A. Into the kitchen.

Q. The restaurant is longer than it is wide, is it? A. Yes.

Q. It is what you describe as narrow and long? A. Yes. Well, I should say it was twenty feet wide and thirty or thirty-five feet long, approximately.

Q. Have you any recollection at the present time how many people were in the restaurant? A. There were some several people in there. I should say perhaps eight or ten altogether.

Q. Was Anna Smith one of the witnesses who were working there that night? A. There was this other lady who they claimed was a partner in the business, and Anna Smith. Those were the only two women in there at the time.

Mr. Cunningham: That is all.

CROSS EXAMINATION by Mr. Hill:

Q. This 635 Main Street is where with reference to Chippewa Street? A. Well, it is what I call above Chippewa, between Chippewa and Tupper. I thing that is the next street above Chippewa. It is about half way in the middle of the block.

Q. Is it anywhere near Pierce's building? A. Doctor Pierce's Hospital?

Q. Doctor Pierce's Hospital on the other side of the street? A. Yes.

Q. You found it a very fine and a very clean place, did you not? A. Yes, sir, a nice clean place.

Q. Everything was in a clean condition? A.
156 Yes.

Q. People were coming in, I suppose, and going out? A. Yes.

Q. And were being served there that night? A. Yes.

Q. Your duties were simply to report on the
157 infraction of this law? A. I did. I reported the condition as I found in the place.

Q. In reference to over employment? A. In reference to the employees and their employment.

Q. Do you know whether the hour was as you have already mentioned? A. What?

158 Q. Wasn't it earlier in the evening than eleven o'clock? A. No.

Q. How do you fix the time? A. I looked at my watch. I had previously compared it with a clock down the street.

Q. If you say so, it is all right. It is not im-
159 portant. It was after ten o'clock? A. Yes.

Q. How long were you there, Mr. Johnson? A. Perhaps a half hour or twenty minutes.

Q. What? A. Possibly half an hour or twenty minutes.

Q. Did you go in the kitchen? A. I did.

160 Q. How did that compare with reference to cleanliness? A. Very nice and clean.

Q. You didn't observe anything about the premises except that it was clean and nice? A. Yes.

Q. Sanitary and clean as well as you could find in any restaurant? A. Yes, sir.

Q. You didn'tmake any complaint by reason of its character? A. No.

Q. You saw Anna Smith working there waiting on customers at some one or a number of tables, I suppose, on that occasion when you visited the place at eleven o'clock at night? A. Yes. 161

Q. In other words, she was serving some of the customers? A. Yes. She was waiting on the people there, serving them. 162

Q. Did you notice who was doing the work in the kitchen? A. There were two men out in the kitchen besides these two women that were going back and forth between the kitchen and the dining-room.

Mr. Hill: I think that is all, Mr. Johnson. 163

RE-DIRECT EXAMINATION by Mr. Cunningham:

Q. Mr. Johnson, there were no rooms for lodging purposes in connection with this restaurant? A. No. There were no rooms whatever. 164

Mr. Hill: I don't claim there were any rooms for lodging there.

Mr. Cunningham: That is all.

Mr. Hill: That is all. 165

ANNA SCHMITT, being called and sworn on behalf of the People, testified as follows:

The Court: Where do you live? A. 592 Niagara Street.

The Court: Go ahead.

DIRECT EXAMINATION by Mr. Cunning-
166 ham:

Q. Mrs. Schmitt, how old are you? A. Twenty-eight.

Q. You are a married woman? A. Yes, sir.

Q. You remember the night of the 10th of November, 1917 when Mr. Johnson, the inspector
167 who just testified, came into the restaurant of Joseph Radice & Company at 635 Main Street? A. Yes, sir.

Q. What were you doing that night when he came in? A. Serving some people and finishing with them.

168 Q. You were a waitress? A. Yes.

Q. The hour was about eleven o'clock? A. No. It was twenty after ten.

Q. According to your recollection? A. So it was.

Q. You heard Mr. Johnson testify that it was
169 three minutes after eleven? A. So he said, but it was not.

Q. You heard him so testify? A. Yes.

Q. You say it was twenty minutes after ten? A. Yes.

Q. That time when he came in you were acting
170 as waitress and serving customers who came in and asked to be served? A. Yes, sir.

Mr. Cunningham: That is all.

CROSS EXAMINATION by Mr. Hill:

Q. How long did Mr. Johnson stay in the restaurant that evening, Mrs. Schmitt? A. He was in there quite awhile.

Q. So it is possible when he went out it may have been eleven o'clock? A. Oh, yes. It was about that time, I should say. 171

RE-DIRECT EXAMINATION by Mr. Cunningham:

Q. You were still working when he left? A. I had to finish with my people. 172

Q. You were still working when he left? A. Yes.

RE-CROSS EXAMINATION by Mr. Hill:

Q. You say that you were? A. Yes.

Mr. Hill: The Court will understand perhaps now the purpose of my cross examination. Of course, if the Courts sustains this law at all, they have got to sustain it on the ground it is within the police powers of the state for the protection of health. 173

The Court: Very well. 174

Q. How did you happen to become employed in Mr. Radice's restaurant? Tell the Court in simple language, and at the same time be brief. A. My husband was in the first draft and I thought it was best for me to look out for work to do in case he had to go, which I am sure he will have to go. That was the reason I went out to get work. 175

Q. When did that occur? A. In the first draft. That was in August when I went to work.

Q. He was included in the first call, the first draft, was he? A. Yes, sir.

Q. Did you talk this over with your husband about finding some work? A. Yes, sir.

Q. To maintain yourself? A. Yes.

176 Q. Do you have any other means of support other than what he earns and what you earn? A. No, sir.

Q. You are entirely dependent upon your labor and upon his labor? A. Yes.

Q. When he was called by the Government into

177 the Federal service you felt that you must find employment? A. Yes, sir.

Q. You went to Mr. Radice, the defendant in this action? A. Yes.

Q. And you were engaged by him as waitress in his restaurant? A. Yes, sir.

178 Q. Have you been working there continually until this notice was served on you? A. Yes, sir.

Q. Had you been? A. Yes.

Q. Your duties, you say, were those of waitress? A. Yes, sir.

Q. Were there other ladies employed in the

179 restaurant? A. Yes.

Q. As waitresses? A. Yes.

Q. Other girls employed? A. Yes, sir.

Q. On November 10th what were your hours? When did you begin work? A. I worked from twelve to two and from six to ten.

180 Q. From twelve until two? A. Yes.

Q. Then from six to ten? A. Yes.

Q. Did you work after ten o'clock before the notice was served on you? A. No, sir.

Q. Before? A. Yes.

Q. Your engagement was what? How late were you supposed to work if there had been no law like this? What would have been your hours of employment, from six until what? A. From six to twelve.

Q. Were you employed by the defendant to work from six to twelve? A. No.

181

Q. I don't understand. What did he tell you your hours would be when you engaged to work as a waitress in this restaurant? How late did he tell you he would need your services? A. He didn't tell us any hours. Just the way the other girls worked.

182

Q. Before the 10th of November how late did you work? A. Before the 10th?

Q. Yes. Did you work up until twelve o'clock? A. Yes, sir.

Q. Isn't it a fact that you were usually engaged from six o'clock until twelve o'clock at night? A. Yes.

183

Q. You were engaged two hours before that some time in the afternoon? A. Yes. From twelve to two.

Q. Then you didn't go on the next day until twelve o'clock? A. Yes.

184

The Court: You mean six o'clock P. M.?

Mr. Hill: Yes.

Q. Your hours at most were from twelve to two in the afternoon and from six to twelve in the evening? A. Yes.

185

Q. Were you so engaged by the defendant? A. Yes.

Q. After you had been engaged there for some time to work in his restaurant you did work along in this way for some time before the 10th of November? A. Yes.

Q. Then you were notified that you could not continue to work after ten o'clock? A. Yes.

Q. Although you had hired out to work for
186 longer hours? A. Yes.

Q. At the time of your engagement in such services did you talk with your husband about finding employment? A. Well, after he was drafted I told him I better look out for something to do.

Q. What did he say? A. He said it was all right
187 for me to do it.

Q. You talked the matter over with your husband and reached a conclusion that you must find employment? A. Yes.

Q. You found employment in this first-class restaurant on Main Street? A. Yes.

188 Q. Since that time has your husband been called for duty? A. He got a card this morning. Then he had one of those questionnaires.

Q. He has been expecting to go away any time since your engagement? A. Yes.

Q. You say you have no other means of sup-
189 port? A. No, sir.

Q. Now tell us as a matter of fact if this work in the restaurant is agreeable to you? A. Yes, sir, it is.

Q. In what way? A. It is not hard. The hours are not so very long, and it is nice clean work.

Q. Is it hard work? A. No, sir.

190 Q. Is it work which fatigues you or likely to make you sick? A. No, sir.

Q. How do you say the work there and those hours compares with general household work as to being fatiguing?

Mr. Cunningham: I object on the ground it calls for a conclusion.

The Court: I think she is qualified to speak. I will allow her to answer. 191

Mr. Cunningham: Exception.

A. It is easier to work in a restaurant than it is to do housework.

Q. They are not so fatiguing as general housework? A. No. 192

Q. Is that correct? A. Yes, sir.

Q. Now in addition to your regular compensation are you permitted to receive tips for waiting upon customers? A. Yes, sir, we are.

Q. What hours of the day or night do you receive most from that source? A. Why, after ten o'clock. From ten to twelve the tips are good. 193

Q. Is that restaurant, 635 Main, below the Teck Theater on Main Street? A. Yes.

Q. South of it? A. Yes. It is quite aways south of it.

Q. The next block or so this side of the Teck Theater? A. Yes. 194

Q. What sort of customers come in there at night? A. All first-class people—business men.

Q. Have you seen Buffalo's business men in there at that time of night? A. Yes, sir.

Q. Also ladies of the town, first-class ladies? A. Yes. 195

Q. What sort of a restaurant does Mr. Radice keep? A. A nice, clean, sanitary place.

Q. That is where they cook meat on the rotissery?

Q. It is nice clean cooking? A. Yes.

Q. And fine people come in there, you say? A. Yes.

Q. Now, have you during your employment
196 there been overworked or tired out? A. No, sir.

Q. Have you at any time been ill? A. No, sir.

Q. Have you at any time during your employment there doctored or had a doctor call on you? A. No, sir.

Q. Do you know of any other girls who are
197 employed there that have had occasion to call a doctor? A. No, sir.

Q. Or be ill during their employment? A. No, sir.

Q. While you have been there? A. No.

Q. Do you feel as well now as you did before
198 you went there? A. Yes.

Q. Are your meals wholesome and sufficient to supply your wants? A. Yes.

Q. Is everything about the atmosphere of the place healthful? A. Yes.

Q. So far as you know or so far as you can
199 judge from your employment there? A. Yes, sir.

Mr. Hill: That is all.

RE-DIRECT EXAMINATION by Mr. Cunningham:

Q. Mrs. Schmitt, where you live how does that
200 compare with the location of the restaurant? A. Jersey and Niagara.

Q. How far is it from your home to the restaurant? A. It could not be any more than a mile.

Q. You and your husband live together alone? A. Yes, sir.

Q. You say that you prefer to work in the restaurant than to do housework? A. Yes.

Q. As a matter of fact you do housework also? A. Yes. I have plenty of time to do it.

201

Q. So when you work there you not only work in the restaurant but you do your housework at home? A. There was not much to do at home.

Q. Yes or no? A. Yes.

Q. Since this inspection by Mr. Johnson I understand you have continued to work there, have you not? A. Yes.

202

Q. But you are stopping now at ten o'clock as the law requires? A. No. I only work three hours, from six to nine.

Q. You are not working now until after ten o'clock at night? A. No.

203

Q. Before that time, I understood you to say in answer to Senator Hill's question, you worked usually up until midnight? A. Yes, sir.

Q. Did you go home from the restaurant alone? A. No. My husband called for me.

Q. Each night? A. Yes, sir.

204

Q. There was nothing in the work which you did and were doing on the night when Mr. Johnson was there, which a man could not have done, was there? A. We did have a man, but he quit, and during the rush I volunteered to work and help out that night.

Q. It was work which a man could have done just as well as you could do it? A. Well, yes.

205

Mr. Cunningham: That is all.

RE-CROSS EXAMINATION by Mr. Hill:

Q. But it was work which women ordinarily do, isn't that so? A. Yes. Women mostly wait on tables.

206 Mr. Hill: That is all.

Mr. Cunningham: That is all.

People rest.

207 Mr. Hill: If the Court please, I move that the defendant be discharged from the charge in the information herein contained, on the ground the People have failed to make out a case against the defendant for the reasons set forth in the answer.

208 The Court: I will deny your motion, Senator, at this time.

Mr. Hill: Exception.

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209 FRANKLIN GRAM, being called and sworn on behalf of the defendant, testified as follows:

The Court: What is your address, Doctor? A. 849 Humboldt Parkway.

The Court: Go ahead.

210 DIRECT EXAMINATION by Mr. Hill:

Q. What is your business, Doctor? A. I am in the position of registrar of vital statistics in the Department of Health, Buffalo.

Q. How long have you been engaged in that department? A. Twenty-four years last August.

Q. What do the duties as registrar involve? A. Recording morbidity and mortality in the City of Buffalo.

Q. Do you do some practicing besides the work of Registrar of Vital Statistics? A. Have office 211
hours in the evening.

Q. You are a duly licensed physician and surgeon? A. I am.

Q. Have been for how long? A. Since 1891.

Q. You have lived all that time in Buffalo? A. Yes. 212

Q. Your activities have been in the City of Buffalo and vicinity largely? A. Yes.

Q. Now, Doctor, do your duties as Registrar of Vital Statistics,—by the way, you are Acting Commissioner of Health in the absence of Doctor Fronczak? A. I am at the present time. 213

Q. In his absence you are called upon to perform and look after the administrative duties of the entire office? A. Yes.

Q. Those duties take you into hotels, restaurants and other places in town, so that in a general way you are familiar with the conditions as to 214
sanitation and healthfulness of restaurants? A. Those duties as to visiting hotels and restaurants really belong to other bureaus.

Q. What do you know about the condition of female employees in restaurants in reference to healthfulness? A. The employment of men and 215
women in restaurants ought to be among the most healthful employments there is. So far as women are concerned, it would be natural employment for women. As regards healthfulness, we have looked over the records after you 'phoned me this morning, and I don't find any fact or don't recall one waitress appearing on the death certificate as stating that was her calling or profes-

sion. I used to handle every death certificate that
216 came in for many years until the duties got so large that I could not take care of them or of the details. Now I have general supervision, but I also get the results as compiled by my assistants, and I do not think we have had a waiter or waitress in the death certificate for a long time. I
217 don't recollect any. As regards morbidity, they are human like other people and will get sick. We feel fairly sure of this, because with different positions it would be no more than natural, but I cannot recall the death of any waiter or waitress for a long time.

218 Q. What would you say, Doctor, as to the healthfulness of the occupation of waitress as compared with the occupation of housewife performing household duties? A. I should say that it would be better, because she would have different duties as a waitress, whereas as a house-
219 wise her duties would be more general and more onerous.

Q. This occasional illness that you alluded to are only cases which occur— A. The same as would be liable to happen to any other person

Q. Not attributal to the vocation at all? A. No,
220 sir. The same as would happen to any person engaged in any kind of work.

Q. But not attributed to the occupation of waitress? A. Not attributed to that particular occupation, no.

Q. Now, doctor, is there a complete supervision by the Health Department of the City of Buffalo of restaurants in this city? A. The Bureau of Foods and Drugs looks after all that.

Q. Is that in your department? A. No.

Q. Is it in the Health Department? A. Yes. 221

Q. Go on and define what it is, so we will have it in the record. You have complete supervision of all laws leading or relating to the health, sanitation and general conditions of restaurants in the City of Buffalo? A. Yes, sir.

Q. And the Department of Health looks after 222 it? A. Yes, sir.

Q. In detail? A. Yes.

Q. Do you employ regular inspectors? A. Yes.

Q. Do they make regular reports? A. Yes, sir.

Q. So you know the condition as a matter of fact of every restaurant in Buffalo practically 223 without interruption, do you? A. In fact, we are accused sometimes of making too many inspections. They all attempt to overdo it rather than underdo it.

Q. Now, doctor, do you know of any conditions surrounding or involved in the employment of 224 waitresses in restaurants, such as 635 Main Street in the City of Buffalo, that are deleterious in any way to the health or morals of people engaged therein? A. I am not familiar with that restaurant personally, Senator. I don't know whether our records show any inspection of it or not. 225

Mr. Hill: We have the records and we will show them.

Q. Do you know of any conditions surrounding or involved in the employment of restaurants subject to your inspection and supervision that are unhealthy? A. I don't know. I would have to refer to the records in order to answer that.

Q. Assuming that the conditions are sanitary
226 and wholesome, do you know of any reasons why such employment should be deleterious to their health? A. No reason that I can see.

Q. I am speaking to you as a physician. A. Yes, sir.

Q. Isn't it a fact that that employment is just
227 as wholesome and as little injurious to females as any employment they can engage in? A. I should say in a great many respects it would be better.

Q. Your answer is that it is and in a great many respects better? A. Yes.

Q. Can you imagine any employment that more
228 conserves the health of women than employment in restaurants where santitation and the surroundings are proper? A. Well, that is rather a broad question, Senator, because I can imagine many employments.

Q. Is there anything among ordinary employ-
229 ment? A. No. I should say that was as healthful employment as any female could be engaged in, as much so as housework.

Q. Even more so where a woman has to do the sweeping, washing, ironing, etc.? A. Where they have to do all the housework it certainly would
230 be preferable.

Q. Is there anything in the hours from six to twelve that is objectionable for employment of women, providing she has the usual amount of rest before that? A. From six to twelve in the evening?

Q. Yes. A. If she has enough rest to herself, I should say not.

Q. Assuming that she has the ordinary amount of rest? A. Yes, sir. 231

Q. Isn't it a fact that a great many of the occupations at the present time require men and boys to work in the evening, sometimes to very late hours, and it is customary for them in this city to go to restaurants for their meals? A. Absolutely. 232

Q. That is becoming a necessity? A. Yes, sir.

Q. In other words, the employment of people in restaurants in the evening in and of itself is now becoming a necessity? A. Yes, sir.

Q. By reason of the increased activity in which the countries are engaged? A. Especially in a large city like this. I don't see how you could dispense with it unless some people went hungry. 233

Q. Isn't it a fact that there are thousands of men employed all night long in this city who must find meals or lunches sometime during the night? A. Yes. 234

Q. Isn't it a fact there is a general shortage or withdrawal of young men from all occupations so that it is more difficult to get them now for service of any kind owing to the fact that they have been called into the United States service? A. That is a well known fact, Senator. 235

Q. Are you familiar with the fact that women are employed now in delivering telegrams and serving on street cars in some localities? A. I have known them to come into my office and get telegraph messages.

Q. At all reasonable hours? A. Yes.

Q. And women are now employed on street cars? A. I only know that by hearsay.

Mr. Hill: I will have to swear my friend.

236 I know that in New York that is a fact.

Mr. Cunningham: I will concede that in New York they are serving on street cars in the Subway.

Mr. Hill: You will concede that they are

237 employed there?

Mr. Cunningham: Yes.

Mr. Hill: I think that is all, Doctor.

CROSS EXAMINATION by Mr. Cunningham:

238 Q. Now, Doctor, do I understand you as a physician to testify that night work is not deleterious to the health of women? A. Reasonable night work; reasonable hours is not, providing she has sufficient time for rest and recreation at other hours.

239 Q. But day work generally speaking is better than night work for either men or women? A. That is usually conceded. Nobody wants to work at night unless they have to.

Q. As a matter of a physical proposition, for the human body day work is better than night work, night time being the natural time for a per-

240 son to rest? A. Well, you can get accustomed to doing almost anything in that respect. If you were a physician, you would be up and down night and day.

Q. I think you dodge my question a little, Doctor. A. I am trying not to.

Q. For the human body isn't day work better than night work, night time being the natural

time for rest? A. I would have to qualify that as I did before. Day work is preferable, but it is not 241
more injurious to work at night providing you have sufficient compensation, rest and recreation.

Q. You don't mean compensation as regards money? A. Physical compensation.

Q. You say that work all night from six o'clock on until six in the morning is not dangerous to 242
the health of women? A. Six at night to six in the morning?

Q. Or from ten at night to six in the morning? A. That would be eight hours. Well, it would naturally involve a greater strain on account of the physical condition.

243

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

Q. Doctor, your department makes a complete survey of the City with reference to all matters pertaining to the health of the public? A. Public 244
health, yes, sir.

Q. It never occurred to your department, so far as you know, to make any suggestions to the Legislature to limit the hours of labor for females to ten o'clock in the evening? A. Well, I would have to have the Commissioner answer that, be- 245
cause I don't know.

Q. You don't know of any such suggestion? A. No.

Q. It was not on your complaint, so far as you know? A. No, sir. These surveys are made peri-

odically, and if anything is found that is unsani-
246 tary or unhealthful, we try to remedy it.

Q. As a matter of fact, conditions in this city are considered the best and have been for years? A. Among the best.

Q. Among the best of the cities of the country? A. Yes, sir. The records will verify that as com-
247 pared with other cities.

Q. And the records, so far as you know, are good in other large cities of the state, first and second class, such as New York, Brooklyn, Albany, Troy— A. All large cities.

Q. Utica, Syracuse, Rochester and Buffalo all
248 show very good conditions from a healthfulness standpoint? A. Yes, sir, they do.

Mr. Hill: That is all.

RE-CROSS EXAMINATION by Mr. Cunningham:

249 Q. Doctor, you testified that the work which a waitress does is easy work; easier in fact in your judgment than house work. Am I right in that? A. Yes, sir.

Q. Take the case of a girl who acts as cashier in a mercantile establishment. Is the work done
250 by a cashier more difficult from a physical standpoint than that done by a waitress? A. Yes.

Q. In what respect? A. Greater nervous strain, more confining and a more nervous strain

physically. There are several reasons why the duties of a cashier are harder, sitting on that par- 251
ticular chair or standing. In fact, a great deal there depends upon the conditions surrounding the position. If she is only a cashier, her work would necessarily be confining and exacting. I have known of some girls getting sick simply because they could not make use of the toilet facili- 252
ties but had to stay where they were until they were relieved either by the end of their services or somebody coming to take their place for the moment.

Q. Is the work which a clerk in a store does more difficult from a physical point of view than 253
that which a waitress does? A. Well, that would depend upon the nature of the clerkship.

Q. Well, such work as an ordinary clerk in a store does waiting upon customers as a customer comes over to buy goods? A. What kind of a store? 254

Q. Any kind. dry goods store, meat market, butcher shop, and places of that sort? A. I don't know as there would be much difference.

Q. Take the case of a woman who works in a bakery and waits upon the trade as it comes in, doing up packages, rolls of bread and things of 255
that sort, is such work more difficult than that of a waitress? A. I should not think so.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

IRENE M. SERVOSS, being called and sworn
256 on behalf of the defendant, testified as follows:

The Court:

Q. What is your address? A. 83 Clairmont Avenue.

The Court: Go ahead.

257 DIRECT EXAMINATION by Mr. Hill:

Q. What is your position and what has it been during the last few years? A. Inspector of foods in the city Department of Health.

Q. And drugs? A. Food and drugs, Depart-
258 ment of Health.

Q. How long have you been engaged in that service? A. About three years and a half. Four years this coming summer.

Q. What do your duties involve? A. Involv-
ing the general inspection and supervision of the
259 sanitary conditions and food conditions, all sorts of food conditions, reastaurants, ice cream parlors, groceries, and such things.

Q. What district have you got? A. My district runs from William and Michigan, out Jefferson, up to Black Rock, over to the River and up
260 town.

Q. Does that include No. 635 Main Street? A. Yes, sir.

Q. How long have you been in that district? A. Three years this month. Since the time we divided the city into districts and each inspector assigned to a certain district.

Q. You know the premises No. 635 Main Street.

Buffalo, N. Y., which are kept by Mr. Radice? A. Yes. 261

Q. You remember about the time he rented that place for restaurant purposes? A. Yes.

Q. Were you or your department consulted with reference to the matter before he went in there? A. I was. When I found a restaurant was to be established at that address I looked up 262 the owners and had an appointment to meet them at their office in Ellicott Square and also an appointment to meet them at the place, 635 Main Street, to go over the entire situation and plan for sanitary conditions.

Q. What did you do after that? A. When we 263 have a case of that kind we follow it up from time to time to see that our recommendations are being carried out. When the business is established we make an inspection to see that the sanitary conditions, food, etc., are satisfactory.

Q. What were the results in this particular 264 case of Mr. Radice's institution, of his restaurant? A. You mean the conditions I found?

Q. Yes. A. I have never had any criticism to make there. I found the suggestions and recommendations that I made when they were remodeling the place, that they followed them out as I 265 suggested. Since that time I have made periodical inspections there and I have never had any complaint to make.

Q. You found the conditions there as you had recommended they be made? A. Yes.

Q. In every instance? A. Yes.

Q. All of his restaurants are satisfactory which

you have personal supervision of? A. In my dis-
266 trict, yes.

Q. What does your inspection involve as to sanitary and healthful conditions? A. To see that the place is sanitary, that his place is kept clean and that all utensils being used are kept clean, that the floors are kept clean, that the toilet
267 and dress rooms, etc., are clean and that their food, refrigerator and everything of that kind are kept in a proper condition and that the food is good.

Q. And wholesome food? A. Yes; at the time we make our inspection.

268 Q. Do you go upon notice or without notice to the restaurants? A. I go in at any time in the daytime or in the evening, or on a Sunday if we choose to. If there is a kitchen door entrance, I go in the back way.

Q. Do you make your reports periodically? A.
269 We make a report whenever we make an inspection.

Q. Have you been so doing with reference to Mr. Radice's place on Main Street? A. Yes, sir.

Q. 635 Main Street? A. Yes, sir.

Q. Since it was opened in May, 1917? A. Yes,
270 sir.

Q. State generally what you found the condition to be there as to sanitation, healthful, cleanliness and all of those things that have to do with the question of health? A. I found them satisfactory. I did not make any further recommendations.

Q. You found them in perfect condition? A. Yes.

Q. So that you were perfectly satisfied with the condition? A. Yes, sir. 271

Q. Do you make periodical reports as to that place? A. Yes.

Mr. Hill: Now will you please let us see your copies?

Mr. Cunningham: I do not raise any question in this case but what Mr. Radice's place is a clean and first-class restaurant. I don't think you need to go to the trouble of putting that in the record. I will concede upon the record that the place where this woman was employed was a clean and wholesome place. 272 273

Mr. Hill: I want to go a little further than that. Let us put those in evidence if there is no objection.

Mr. Cunningham: I object to their introduction as incompetent and immaterial. 274

The Court: You don't raise any objection as to the form of the report?

Mr. Cunningham: No. Only as to their competency.

275

Q. Have you the original records that you made the reports from? A. Yes.

Q. Of the conditions you found at different times at Mr. Radice's place? A. Yes.

Q. You have them with you? A. Yes. They are right here in my hand.

Q. Those are the records? A. Yes, sir.

Mr. Hill: We will offer them in evidence.
276 We will simply put in the copies after Your Honor rules on the matter.

The Court: He objects on the ground they are incompetent and immaterial.

Mr. Hill: Yes. If Your Honor rules
277 that they are admissable we will put the copies in.

The Court: I think I will give Mr. Cunningham an exception and receive them.

(Papers referred to received in evidence
278 and marked "Defendant's Exhibits Nos. 1 to 10 inclusive.")

Q. These are official reports you made as inspector of foods and drugs of the Department of Health of the City of Buffalo from time to time? A. Yes, sir.

279 Q. They were made out as part of your official duties, were they? A. Yes, sir.

Q. And they contain the conditions you found there on these different occasions? A. Yes.

Q. They were made without reference to this lawsuit, were they not? A. Certainly.

280 Q. Entirely in advance of that? A. The dates show when they were made.

Q. What is the meaning of "11-7" on here? A. That is November 7th. 1917.

Q. Now turn to October and see what you have there? A. Here is October 1st. Place clean and in good order. Food on hand O. K.

Q. Get as near as you can to November 10th. Find one the nearest to that date. A. I have one

for November 7th and one for November 28th.

Q. November 7th? A. Yes. That is the same report, practically. Everything on hand clean and in good condition. Food on hand O. K. We make a special inspection of food and always make a special report on it. 281

Q. November 28th? A. That was made at six fifteen p. m. Place clean and sanitary. Food on hand O. K. Made inspection here purposely at a busy hour during the rush of the evening meal. Found the kitchen cooking and service exceptionally clean. 282

Q. Now let me ask you this question. What special study have you made of the work incidental to your employment prior to your going into such employment? A. You mean work of similar character? 283

Q. Yes. A. I have been in work of this character for a good many years investigating these things as a general study.

Q. You have made a study of these conditions for a good many years? A. Yes. 284

Q. You are familiar with the conditions of waitresses employed in such places as restaurants in cities of the first and second class of the state? A. Generally speaking, as I have seen them in going around and watching them. 285

Q. You duties take you out nearly every day, do they? A. Yes, sir; all the time.

Q. And you are familiar with the duties that waitresses are called upon to perform in these restaurants in cities of the first and second class of the state? A. Generally speaking, yes, sir.

Q. What do you say as to the healthfulness of

the occupation of waitresses in restaurants of this
286 city so far as you can judge from your investigation of the conditions existing therein and your knowledge of the occupations that women pursue?

Mr. Cunningham: That is objected to on the ground the witness has not shown herselt to be an expert and it calls for a con-
287 clusion such as an expert only can give.

The Court: You may inquire further as to her qualifications. (No response from the witness in reply to the last question asked.)

288 Q. Tell further what you have done in the way of studying these conditions with reference to such employment as that of ladies in restaurants. A. I have made no special study of that.

The Court:

Q. What are your qualifications? A. As
289 far as health conditions go?

Q. Yes? A. With reference to sanitary conditions and conditions under which they work, it seems to me that—

The Court: No. That is your opinion.

290 Mr. Hill: (Resuming)

Q. What have you observed? What have you seen? A. Where conditions are good and where the sanitary conditions are good—

The Court: No. He doesn't want that.

Q. What has been your experience? A. My experience in most cases,—I must limit that. Some conditions are good and some are not.

Q. Assuming that the conditions are all right? A. Then I would not consider that it would be injurious. 291

The Court: No. We will strike that out. The question is directed towards your experience, asking for experience on your part, what you have observed in the course of your duties with reference to the employment of women in this capacity. Now Mr. Cunningham feels that the question calls for expert opinion which you are not able to give, so Mr. Hill is now asking further to find out whether or not you are qualified, notwithstanding you are in a qualifying position. 292 293

The Witness: Yes. I understand.

Q. Has your experience brought you in contact with women employed in this capacity in a number of cases? Has your attention been directed to the employment of women in this capacity so that you have had opportunity to observe the character and condition of their employment as affecting their welfare? A. I have had that in my general visiting around these places, yes, sir. 294 295

Q. Has your attention been called to that particularly? A. Not particularly.

Q. You have been looking there to see what the condition of the food was and the general condition of the place? A. Yes. I see these things, naturally being interested

in all the conditions. I have noticed them,
296 but that is not in my jurisdiction or work.

Mr. Hill: (Resuming.)

Q. Have you ever seen employees sick or ill in restaurants that you have visited from time to time? A. No. I may have seen some with a sore throat or something like that, but nothing
297 that would be serious.

Q. Have you noticed some employees in restaurants for two or three years in succession? A. I have them in some places.

Q. Do you know any of the ladies in restaurants in the city, independent of the places you
298 have been inspecting, that have been serving for quite a number of years? A. Yes, I think I do.

Q. They appear to be in a healthful condition, do they not? A. Yes.

Q. Do you know anything about the employment of females in our Buffalo restaurants and in
299 cities of the first and second class that is unhealthy? A. No. I must qualify it by saying that it depends upon their surroundings.

Q. Merely serving a meal to me or to the Judge at ten o'clock at night, do you regard that as unhealthy? A. No sir.

300 Q. Is there anything in the occupation itself that is deleterious to health? A. No, sir.

Q. Have you ever had any complaint against 635 Main Street as to its being unclean? A. No, sir.

Q. Were you ever in there nights or days when there were crowds in there? A. Yes.

Q. What did you observe? A. General conditions the same as I have reported them on one 301
of those cards.

Q. You have never had cause to criticize that restaurant? A. No, sir.

Mr. Hill: That is all.

CROSS EXAMINATION by Mr. Cunningham: 302

Q. Mrs. Servoss, as a matter of fact you don't know anything about the condition of employment so far as the employees in restaurants are concerned? A. Yes, I think I do.

Q. Your duties don't call upon you to observe the condition of employment at all? A. My strict 303
duties do not compel me to.

Q. Your answer is no, then? A. I will say no.

Q. Your observation or your inspections as city inspector are devoted purely to the sanitary conditions and the food conditions in restaurants? A. That is what I am employed for. 304

Q. When you go in a restaurant you don't pay any attention at all to the employees, do you?

A. You mean in carrying out my work for the city.

Q. Yes? A. Of course not. My work doesn't call for that. 305

Q. Isn't it a fact that the first time you ever gave the matter of employment of women in restaurants any serious throught was about five or six minutes ago during your examination of counsel? A. No, sir.

Q. How late do you make inspections? A. Any time. Sometimes late in the evening. I have made inspections as late as eleven o'clock in the even-

ing sometimes. I have made them at seven or half-
306 past seven in the morning and sometimes on Sunday.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

307

JOHN C. FLYNN, being called and sworn on behalf of the defendant testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. Where do you reside? A. 385 Washington
308 Street.

Q. What is your besiness? A. Restaurant.

Q. How long have you been in the restaurant business? A. Going on thirteen years.

Q. At the place you have given us the number of? A. 385 Washington Street, Buffalo, New
309 York.

Q. Are you familiar with the operation of restaurants in Buffalo? A. Yes.

Q. What are the usual hours that restaurants are kept open for serving meals? A. Why, we run from seven in the morning until eight at night.

310 Q. Generally speaking what are the hours? A. Some run day and night, twenty-four hours.

Q. Are they open in the evening ordinarily? A. Why, yes. They are open until eight o'clock or eight thirty.

Q. Are they open later than eight thirty? A. Yes. Some run until twelve o'clock and some run all night.

Q. Who are there to be served in the evening with restaurant service? A. Commercial men coming in or going out on trains, people who work nights— 311

Q. Employees engaged in business? A. Newspaper men.

Q. People engaged in various occupations in the city? A. Yes. 312

Q. Now state whether or not the matter of employing laboring men is a matter of any great concern to the restaurant keepers of Buffalo? A. Why, yes, sir, at present it is. It is almost next to impossible to get competent help.

Q. What do you mean by competent help? A. Help that will go ahead with the work and follow instructions. There are some who will follow instructions, but a lot of them you might instruct them all day and not be any further ahead than when you were when you started. 313

Q. Have you during the past six months been able to engage boys and men in such service? A. No. 314

Q. Why? A. There are so many other positions open for them it is pretty nearly impossible to get them to work in restaurants.

Q. Supposing that tomorrow a law was passed to the effect that you were not allowed to employ women after seven o'clock at night, would it be possible to maintain under existing conditions at the usual wage restaurants that had kept open after seven o'clock in the city or state? 315

Mr. Cunningham: I object to that on the ground it calls for a conclusion.

The Court: I think it should be confined
316 to the questions here, so far as the question of hours is concerned.

Mr. Hill: All right.

The Court: Because if you ask it in that way, you might have the privilege of asking for five o'clock, four o'clock, or any
317 other hour.

Mr. Hill: Exception.

(No response from the witness in reply to the last question asked.)

318 Q. Now we will change that. Will it be possible if Chapter 535 is rigidly enforced for restaurants to run after ten o'clock at night by employing men and boys of proper qualifications for that service at reasonable wages?

Mr. Cunningham: That is objected to as
319 incompetent and calling for a conclusion.

The Court: It is competent because it is immediately connected with the question raised, if he is qualified to speak.

(No response from the witness.)

320 Q. I will ask you one further question. Are you an officer of the Buffalo Restaurant Association? A. Yes, sir.

Q. State whether or not you are familiar with the conditions of restaurants in this city? A. Yes, sir.

Q. Familiar with the condition in reference to the employment of labor? A. Yes, sir.

Q. In your Association have you had occasion to look into the question of employment of help in the city? A. Yes, sir. 321

Q. State what you have done? A. Some of the members who have been in the habit of keeping their places open all night have had to close up at ten o'clock at night on account of not being able to secure male help to run their places. 322

Q. Is that true of Berma on Main Street? A. I don't know in that particular case.

Mr. Hill: I neglected to ask the lady about that. She knew all about it.

Q. You do know of some? A. Yes. 323

Q. What was the cause of their closing? A. Simply because they could not procure male help and the law did not allow them to work females after ten o'clock.

Mr. Cunningham: I object on the ground the witness is not qualified to testify to this condition. His only source of information is information coming to him by word of mouth from members of the association. 324

The Court: It is hear-say, of course.

Q. Have you talked with people who have closed their places? A. Yes. sir. 325

Q. You have a Buffalo Restaurant Association? A. Yes, sir.

Q. Mr. Statler is at the head of it? A. Yes.

Q. You have a Board of Directors? A. Yes.

Q. Are you one of the Board? A. Yes.

Q. Have you during the past three or four

months spent considerable time looking into con-
326 ditions in the city? A. Yes, sir.

Q. Have you talked with a great many restaurant proprietors? A. Yes.

Q. Have you talked with a great many of them in their places of business? A. Yes.

Q. Have you held board meetings, executive
327 meetings, on the question of this law? A. Yes, sir.

Q. Have you had reports made to you? A. Yes, sir.

Q. Have you made efforts to secure male help in place of female help who were obliged to dis-
328 continue working at ten o'clock? A. Yes, sir.

Q. Have you been able to secure male help to man restaurants after ten o'clock at night? A. No, sir.

Q. Is it going to be impossible to keep them open? A. It looks that way.

329 Mr. Hill: Does that answer Your Honor's question?

Mr. Cunningham: I have raised an objec- to it on the general ground.

The Court: You object to this testimony
330 on the ground it is hear-say?

Mr. Cunningham: Yes; and on the further ground he is not qualified to speak.

Q. Have you made any efforts yourself to engage men to serve in your restaurants and been unable to find them? A. We don't keep open nights.

The Court:

Q. Where is your restaurant? A. 385 Washington Street; near the Lafayette Hotel. 331

The Court: I think I will allow that testimony and give Mr. Cunningham an exception.

332

Q. Do you find that employees in your restaurant are adverse to working after ten o'clock at night?

Mr. Cunningham: I object as irrelevant and not within the issue.

(No response from the witness in reply to the last question asked.) 333

Q. I will change that. Do you know of your own knowledge whether or not female employees in restaurants are adverse to working nights? A. Why, some are and some are not.

Q. Is the services which they are engaged in entirely voluntary services so that those who care will be permitted to work and those who do not would not be required to work? A. Yes, sir. 334

Q. Without any discrimination? A. Yes.

Q. So some find it more convenient to work evenings and prefer it to working daytime? A. Yes. I have had girls come in and ask for a position to work nights. Q. What were their reasons for asking for night work? 335

Mr. Cunningham: That is objected to as incompetent and not within the issue.

The Court: I will sustain the objection.

Mr. Hill: Exception.

(No response from the witness in reply
336 to the last question asked.)

Q. You don't keep open and you don't employ them? A. No.

Q. But you do know of restaurants where it is necessary to employ women nights after ten o'clock? A. Yes.

337 Q. Can you mention some restaurants running after ten o'clock at night, some of the important ones uptown here? A. Yes. There is Child's restaurant. He employs girls. There are several of them.

Q. There are a great many restaurants around
338 town? A. Yes. The biggest part of the restaurants in Buffalo, I should say, keep open nights. There are very few that close up.

Q. From your knowledge of such services would you say the employment of ladies in restaurants nights is detrimental to their health?

339 Mr. Cunningham: I object to that.

The Court: I will allow him to state if he has observed that.

(No response from the witness in reply to the last question asked.)

340 Q. Have you observed that? A. No, I have not observed that it is detrimental to their health in any way, shape or manner, because we have—

The Court: Never mind why.

Q. What have you done? Never mind why. A. We have six girls over there at the present time who are perfect pictures of health.

The Court:

Q. Do your employees remain with you and continuously keep at that work without laying off. A. Yes. 341

Q. Right along, year after year? A. Yes. We have girls there that have been there since we opened up.

Q. How long is that? A. It is going on the third year now. 342

Mr. Hill: (Resuming)

Q. Know of any other employees in restaurants up town that have been employed longer than that? A. I know of two girls. One, I believe, was employed fourteen and the other sixteen years in some places. They are in well health today. 343

Q. Fourteen years? A. Yes, sir.

Mr. Hill: That is all. 344

CROSS EXAMINATION by Mr. Cunningham:

Q. You operate only in the day time? A. About nine o'clock at night we close.

Q. So at no time do your girls work after ten o'clock? A. No. 345

Q. At no time during the three years have the girls who work for you been doing night work in this way? A. No, sir.

Q. They begin work at what time of day? A. Some begin at seven in the morning, others in the middle of the afternoon; others come on at eight. We have one girl who works until nine or nine-thirty, whenever we finish up.

Q. You testified about the shortage of help.
346 Now do you know what is the cause of this shortage of help? A. Well, I can't say that exactly outside of the fact if you take men away from any one line of work and take him out of the country entirely it leaves that position open for some one else to fill.

347 Q. In other words, it is the abnormal condition under which we are now laboring, to wit, the war, which has caused the shortage of help, is it not? A. At the present time I would say yes, although it does not seem that you can get male help to work in restaurants because there are so many
348 other positions open for them to work at any time.

Q. You seriously testify that you can't get male help to work in restaurants? A. Yes.

Q. Under normal conditions? A. Yes. I don't say that you can't get them, but it is hard to get
349 them.

Q. Don't you know there are more men waiters in the City of New York than any other class of people? A. That is true.

Q. As a matter of fact the men who normally engage in that line of work are now engaged in
350 war work or been taken away in the draft? A. At the present time, yes.

Q. So in the answer to my original question, it is due to the war? A. Yes, I should say so.

Q. And when we resume normal conditions with the normal supply of labor men will be there to work in restaurants in all probability? A. I don't know. I could not answer that question.

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

Q. Isn't it a fact that you never had your restaurants in Buffalo served with man labor to any extent? A. I think so. 351

Q. And do you know the conditions in New York? There is not an American in a restaurant in New York City but all the employees they have there are Italian or fellows who have just come to this country, isn't that so? A. Yes. 352

Q. And you cannot find an American in any restaurant? A. Well, I won't say that you cannot find one.

Q. I mean generally speaking they are fellows who have just come over here and they want to get acquainted? A. Yes. 353

Q. Isn't it a fact that where men are employed in restaurants as a rule they are foreigners and they take that until they get a job? A. Yes.

Q. Isn't it a fact that your restaurants in this town have not been able to employ male help to any extent for the last ten years? A. As far as I know. 354

Q. Aside from the large hotels there has been very little employment of male help? A. That is it exactly.

Q. It is more difficult now than it was before and it is getting more so all the time? A. Yes. 355

Mr. Hill: That is all.

Mr. Cunningham: That is all.

STEPHAN BATESON, being called and sworn
356 on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. What is your business? A. I am acting Chief in the Bureau of Food and Drugs.

Q. How long have you been in that position? A.
357 Since January 7th 1915.

Q. What was your position prior to that? A. Chief Clerk in the Department of Health.

Q. How long have you been in the Department? A. Twenty-five years the 7th day of January, this year.

358 Q. During that time have you had occasion to examine sanitary and health conditions in this city with reference to restaurants eating houses, etc? A. Inspectors under my supervision have.

Q. What can you tell us about the conditions existing in the City of Buffalo in October and No-
359 vember 1917? A. Sanitary conditions?

Q. Yes. A. Our observation is that the restaurants in Buffalo generally are in a very sanitary condition from the fact we are observing them very frequently from the time we make an inspection to observe the condition generally as to sani-
360 tation of the restaurant, the kitchen and particularly the utensils and to see that correct food is supplied and generally the condition of the health of the employees with reference to communicable diseases only.

Q. You are a physician? A. No.

Q. What has been your study preparatory to doing this work? A. No particular study, except general education.

Q. You have had occasion to study this condition you have just testified to? A. From reports 361
of the inspectors.

Q. From that information you have and from your knowledge of conditions generally, what would you say as to the healthfulness of the occupation of waitresses in restaurants of this city.

Mr. Cunningham: I object to it on the 362
ground he is not an expert and not qualified to answer that question. He knows about these conditions only from reports which have been handed in to them.

The Court: I think he is confined to his 363
reports. You may show what his reports show.

(No response from the witness in reply to the last question asked.)

Q. What do your reports show? A. In refer-
ence to the health condition of employees? A. 364
Yes.

A. It is a matter that does not come under the jurisdiction of the Bureau of Foods and Drugs, except as they pertain to communicable diseases. In that event we call a physician from the depart-
ment to make a special investigation and take ac- 365
tion accordingly.

Q. Mrs. Servoss is one of your inspectors? A. Yes.

Q. She has been employed in your department for several years she says? A. Yes. Perhaps four or five.

Q. Do you know anything about the effect on the operation of restaurants of the law prohibit-

ing the employment of females after ten o'clock
366 at night? What effect does it have on restaurants?

The Court: In what respect?

Mr. Hill: Whether they have been obliged to close or not.

A. I am not familiar with that condition at all.
367 We have made night inspections of restaurants to discover whether or not the conditions were sanitary.

Q. What did you find? A. We found them in a sanitary condition.

Q. Do you know of any general complaint or
368 any complaint about conditions being unsanitary or unhealthful for the employment of women in restaurants in the city of Buffalo? A. We have had none.

Q. Has there been any general complaint, so far as you know of restaurants being unsanitary in the
369 city? A. It has not come to my attention.

Q. In the last four or five years has there been any agitation of that kind by the people in the city? A. There has been a lot of agitation by the Consumers League.

Q. That is all you know of? A. Yes.

370 Q. You know of no recommendation from your department or any other department of the city on the subject? A. Not from the Bureau of Foods. I am not prepared to state about the other bureaus.

Q. If there had been you would have likely known about it? A. Very likely I would have, but I would not say positively that was so.

Mr. Hill: That is all.

Mr. Cunningham. No questions.

ANNA CASSEUR, being called and sworn on behalf of the defendant, testified as follows: 371

DIRECT EXAMINATION by Mr. Hill:

Q. Where do you live? A. 123 Maryland St.

Q. You are a married woman? A. Yes, sir.

Q. Have you been engaged in restaurant work in the restaurant at 635 Main Street which is 372 owned by Mr. Radice? A. Yes, sir.

Q. How long have you been engaged there? A. Since they opened there the day before Decoration Day.

Q. Been continuously employed since that time? A. Yes. 373

Q. How long were you engaged for? A. Why, Mr. Radice told me I can work as long as I want to. We are engaged to work for one year steady and if I like it I can stay longer.

Q. What were your hours of labor on the 10th day of November, 1917? A. Our hours of labor, 374 —I come to work at six o'clock. That evening I work until twelve.

Q. From six to twelve? A. Yes.

Q. You are engaged for a year to work? A. I was engaged to suit my own hours because I have charge of the dining-room. 375

Q. It has been your hours from six to twelve? A. Yes.

Q. You are engaged for a year for that service? A. Yes, sir.

Q. When that notice was served on Mr. Radice —A. He got word and said I could not work. I told him I would hold him to my contract law or no law.

Q. You had made a contract with Mr. Radice?

376 A. Yes, sir.

Q. You made a contract with him to work from six to twelve o'clock at night? A. Yes.

Q. Then he got word for you to quit? A. Yes.

Q. And you told him that you would hold him to his contract? A. Yes.

377 Q. Do you prefer to work evenings rather than days? A. Yes. Because I can stay at home and cook the meals for my child when he gets home from school; otherwise if I did not get meals for him he would go out and get sick.

Q. What about the evenings? A. My husband is

378 home from work then. He is employed and he is home with him then.

Q. The boy got sick and you then engaged in restaurant work evenings? A. Yes.

Q. Have you any people besides your own family to look after? A. Well, I have been helping my

379 mother and father because they have no support.

Q. So you are both obliged to work? A. Yes.

Q. You have no income except from your employment? A. No, sir.

Q. You have your mother, father, husband and your child and you two are the only wage earn-

380 ers there are? A. Yes.

Q. Your husband and yourself? A. Yes.

Q. He works days and you work around the house and takes care of the children and then you work evenings from six to twelve? A. Yes.

Q. You made a contract with Mr. Radice to work from six o'clock at night to twelve o'clock at night? A. Yes, sir.

Q. When this law took effect he told you that you could not work any longer and you told him that you were going to hold him to his contract? 381

A. Yes, sir.

Q. Had you ever worked as waitress in a restaurant before this? A. I have but it was some years before. I have done restaurant work but it was in the kitchen line. But I liked it because it is easier,—I liked the waitress work because it is easier work and cleaner and you can keep much cleaner. 382

Q. What do you say regarding the employment as to its healthful effect upon you? A. I think a person feels healthy because you have a lot exercise walking. 383

Q. You have good meals there? A. Yes. We have clean clothes on. We have to be clean all the time doing that work.

Q. Is the occupation of waitress unhealthy? A. No, sir, it is not. 384

Q. How does it compare, the effect of it upon the system, with house work? A. Waitress work is easier than house work. In house work you have a different kind of work altogether.

Q. Do you know whether the occupation of waitress has less wear on the system than ordinary house work? A. Yes, sir. 385

Q. Does a waitress work all of the time? A. No. When we have orders we take them, and when we haven't any we sit down and rest. We have always done that.

Q. Do you know any one who has been made sick by working as a waitress in a restaurant? A.

No. All the girls who have worked with me have
386 grown fleshy.

Q. Nobody was sick during the time? A. No, sir.

Mr. Hill: That is all.

CROSS EXAMINATION by Mr. Cunningham:

387 Q. Do you know of any woman who has worked all night in a restaurant? A. Yes, sir.

Q. Women work in the kitchen in connection with restaurants, too? A. Yes.

Q. You say that you have never known of any woman working in a restaurant to get sick? A.
388 Not from doing the work.

Q. They get sick from something else? A. They don't if they take care of themselves.

Q. They don't get sick from taking care of the work? A. No.

Q. You have seen just as many women get sick
389 from restaurants as you have from any other line of work? A. If their health is run down or if their health is not good and they are compelled to—

Q. As a matter of fact, you don't know whether women get sick there or not? A. Yes. I have
390 seen women come in there to work who were compelled to work because their husbands would not work and support them ,when they were not fit to work.

Q. When did you make a contract with Mr. Radice? A. Before the place opened up.

Q. A written contract? A. No. Verbal.

Q. He just hired you? A. No. I consider his

verbal contract just as good as a written one, because I have known him for years.

He just hired you to go to work from six o'clock until twelve? A. Yes.

Q. If he had asked you to work until two o'clock, would you have worked until two? A. No.

Q. In other words, he hired you to take charge of the dining-room? A. Yes.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

CHARLES A. LAUBE, being called and sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. Where do you live? A. 128 Beard Avenue.

Q. What is your business? A. I am a restaurant owner.

Q. Where are your restaurants? A. I have My Lunch at 33 Niagara Street, a restaurant in the Y. M. C. A. and one in the Men's Hotel.

Q. In the city of Buffalo? A. Yes, sir.

Q. How long have you been engaged in the restaurant business? A. Over ten years.

Q. I wish you would tell us in your own way about the conditions that have existed since the enactment of Chapter 535 of the Laws of 1917 prohibiting the employment of women in restaurants after ten o'clock at night. A. At our Niagara Street place we have had two girls working, one

who has been with me ten years the 22nd of De-
396 cember. I think nine years of those ten she has worked nights all night.

Q. Why? A. When she hired out there was a vacancy that occurred at night and she asked for it and got it and has held that job ever since. She is our night manager. The other young lady has
397 been there, I should say, six years doing that same kind of work. The two of them work together. When the question of this law came up I advertised for men. I had an "ad" in the News for three or four days a blind "ad." I got five or six letters. I called in some of the men, but there
398 didn't appear to be any who were satisfactory, so I says we will close up nights. I called the girls and told them that after—I guess is was Monday evening,—I told them that after next week or after Sunday night that we would close up nights but that both of them would be taken care of in
399 day work. that we would put one of them on as cashier and the other as counter girl. They said that they didn't want day work. One of the girls suggested that if I took them in as partners that they could work. I looked it up and we worked out such a partnership and the girls are still work-
400 ing. They are working of their own free will under a partnership agreement. One of the girls has a ten per cent. interest in the business at the present time.

Q. That was the only way you could continue their employment? A. Yes, sir.

Q. They do it voluntarily? A. Yes. They wanted it done in that way so they could work nights, rather than to take a position in the day

time, for which I offered the same money for just as easy or an easier position.

401

Q. Do you find any difficulty to secure help to work nights? A. We did not, no sir.

Q. What effect, if any, has such employment upon women as to their health?

Mr. Cunningham: That is objected to.

402

The Court: I will allow him to testify from his own experience. I think it is competent upon that.

Mr. Cunningham: Exception.

A. Why, I think the girls are just as healthy to-day as they were the day they came to work.

403

Q. Their general appearance of health has been maintained during the course of their employment? A. Yes. In fact, they gained flesh, and I think it is a fact in both of these cases that they are better appearing to day.

404

Q. You have a great many people, lawyers and trades of all profession almost who come into your place for meals? A. Yes.

Q. You have a great many people come in to the Y. M. C. A. for meals? A. Yes, sir.

Q. Do you run the Y. M. C. A. restaurant and serve meals nights? A. We close at eight o'clock, but we do, however, serve dinners to committees at nine or ten o'clock. If they are served at ten it is probably eleven or eleven thirty before they are through.

405

Q. Then you serve meals at the Masonic Temple at times? A. Yes.

Q. How many people do you serve there usual-
406 ly? A. On Niagara Street?

Q. Yes. A. Fifteen hundred on the average.

Q. During the day? A. During the twenty-four hours.

Q. Have you any idea as to the number you served in the evening after ten o'clock before this
407 law took effect? A. About one-quarter of the business is done between eight o'clock in the evening and seven o'clock in the morning.

Q. That is about four hundred people, then. A. Yes.

Q. That is at My Lunch? A. Yes. Some-
408 times we have as many people at two o'clock in the mornig as we do at one o'clock in the afternoon.

Q. Who are the people that come in at that time of night? A. People from all walks of life. We get practically the same trade that we do in
409 the day time. Our trade consists largely of legal people. We do not get much transient trade. We are feeding today practically the same people we fed ten years ago.

Q. You have as many as fifty women or more in there at one time? A. I would not say that many
410 women. Our seating capacity is seventy-six. Our large majority will always be men.

Q. Out of that fifteen hundred how many do you suppose are women? A. I should say three or four hundred.

Q. And you serve about one-quarter of them between eight o'clock at night and the morning? A. Seven o'clock in the moring. That is what we call our night shift.

Q. You say that you advertised for men? A. Yes.

411

Q. What success did you have in getting them? A. I had none whatever. I think I had an "ad" in the News for a week for men to work nights in a restaurant. I think I had either six or seven letters in answer thereto. I had some of the men come in, and out of them there was only one that was at all desirable and he would not take the position.

412

Q. Do you know of any other restaurants that had to close? A. Yes. The one right opposite us had to close.

Q. What one was that? A. The Home Lunch right on the corner. Mr. Eddy had to close for the same reason.

413

Q. Where is he? A. 269 Washington Street, I think. Right opposite Ellicott Square on Washington Street.

Q. How about Berna's? A. I understand that he closed, but I am not familiar about that.

414

Q. Now what do you think is going to be the effect if this law is going to be enforced with reference to all restaurants in Buffalo that are now or that were on the 1st of October continuing after ten o'clock at night?

415

Mr. Cunningham: That is objected to as calling for a conclusion.

(No response from the witness.)

Q. Is it possible to man at reasonable rates restaurants in this city with men to keep them and serve people as thy were served before October 1st, in case this law is enforced?

Mr. Cunningham: That is objected to.
416 There is nothing to show how they were served before October 1st.

(No response from the witness.)

Q. Take that in a general way, that is, to serve them as they were served then? A. With male
417 help at reasonable rates.

The Court: I think the question should be whether or not they could replace female help with male help.

Q. Yes, that is right. Whether by turning out and closing the doors to women in restaurants of
418 this city that were kept open after ten o'clock at night, whether you could now at fair wages fill their places by employing male help? A. It would be impossible I would say. It has been for me at least. That is my own experience.

Q. It would be impossible? A. Yes.

419 Q. At least that has been so in your own case? A. Yes, sir.

Q. From you own experience and observation have you noticed any tendency among females employed in your restaurants to be subject to sick spells of sickness?

420 Mr. Cunningham: That is objected to.

A. I have seen some people have sick spells.

Q. I mean on account of this?

Mr. Cunningham: Wait a minute. The witness is not shown competent or qualified to answer that question.

The Court: I think I will allow him to answer from his own observation.

421

Mr. Cunningham. Exception.

(No response from the witness in reply to the last question asked.)

Q. I mean a tendency more than in any other occupation? A. I have not, no, sir, not any more than ordinarily. 422

Q. Is there anything in the business itself, so far as you know, that is deleterious to health? A. There is not.

Q. Is there anything in kitchen activities that are deleterious to health? A. No, sir.

Q. Now, under this law females in hotels may work at any hour of the night? A. Yes, sir. 423

Mr. Cunningham: I think the law speaks for itself.

Q. Is there anything in the employment of females in restaurants that is any more deleterious to the health of females than it is to females in hotels? A. I should say not. 424

Q. You are running a hotel? A. Yes.

Q. Is there anything in the occupation of females in your restaurant on Niagara Street that is more deleterious to their health than there is in their employment in the hotel you are running? A. There is no difference. Some girls work in different places at different times. 425

Mr. Hill: That is all.

CROSS EXAMINATION by Mr. Cunningham:

426 Q. What restaurant did you say you were connected with? A. My Lunch at 33 Niagara Street, one in the Y. M. C. A. and one in the Mens' Hotel.

Q. How much do you pay your waitresses?

Mr. Hill: That is objected to.

427 The Court: I will allow it.

Mr. Hill: Exception.

A. From seven to ten dollars a week.

Q. Did you ever try to get men in place of these women? A. Yes.

428 Q. By offering them higher wages? Yes.

Q. How much did you offer them? A. I offered twelve dollars a week.

Q. As a matter of fact, it is cheaper to hire women than men? A. In a sense it is, yes.

The Court:

429 Q. When you say seven dollars each for women, does that include their meals in each case? A. Yes.

Mr. Cunningham: (Resuming.)

Q. Women work for less money than men? A. Yes.

430 Q. So it is cheaper and a better business proposition for you to hire women? A. In many ways.

Q. When you say you can't get men to take the place of these women, the reason for that is because you are not willing to pay them enough? A. What?

Q. When you say that you can't get men to take the place of these women who now come under the

prohibition of the statute, the reason for that is because you are not willing to pay them enough? 431
A. No. I offered this man I spoke of twenty-five dollars a week to come. He gets twenty-five a week and his board. He had some experience at the Baltimore Lunch. It was not a question of price. We wanted good reliable help and were willing to pay twenty-five dollars a week.

Q. Did you advertise for such men? A. Yes. 432

Q. Did you advertise the salary? A. No. But the man I picked—

The Court:

Q. Did that include his meals? A. Yes.

Mr. Cunningham: (Resuming.) 433

Q. Don't you know as a matter of fact that men employees are getting from three to five or seven dollars a day in factories in this town? A. Yes. I have one man working for me nights. I pay him seventy-five dollars a month.

Q. You are running a restaurant at night? A. 434
Yes.

Q. With male help? A. The restaurant in the Men's Hotel we have male help. The restaurant on Niagara Street I have two girls there who are partners in the business.

Q. They are partners in the business to get 435
around the law? A. Yes.

Q. Have you got a partnership agreement on file in the County Clerk's offiice? A. Yes.

Q. Have you got a copy of it here? A. No. I have one over at the place.

Mr. Cunningham: That is all.

Mr. Hill: That is all for the present, I
436 think.

The Court: We will suspend at this time, gentlemen.

Proceedings adjourned to March 12th, 1918.

437

Proceedings March 12, 1918. 2:30 o'clock p. m.

Trial of case resumed—Same appearances.

438

CHARLES A. LAUBE, recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

439 Q. You spoke about the question of compensation that was paid your employees in restaurants. I want to ask you whether or not there is any other remuneration that such employees receive in addition to their regular wage? A. They receive their meals and, of course, what we term tips which they receive from guests.

440 Q. What do you think the average compensation is, including pay, meals and tips for a woman?

Mr. Cunningham: I object as incompetent and irrelevant.

The Court: I will allow it.

A. It has been my experience for seven years last past that a girl who knows the business and is a

fair waitress will make from three to four dollars a day in her tips.

Q. A day? A. Yes. A girl who does not make three dollars I would call a poor waitress. She either doesn't know her business or else is a grouch or something.

Q. What does that amount to in about a week, taking their wages, tips and board? A. I think most of the girls will figure up to twenty-five dollars a week salary and tips. A girl who has been in the place a month or two and acquainted with the trade I think twenty-five dollars would be a very modest sum to state.

Q. How many have you in your Niagara restaurant? A. We have ten girls on the floor.

Mr. Hill: I think that is all for the present. I may want to recall you for a question or two later on.

Mr. Cunningham: I simply want to make a motion to strike out the testimony on the ground it is irrelevant and incompetent to the issue.

The Court: I will allow it to stand.

Mr. Cunningham: Exception.

The Court: Do you want to cross examine?

Mr. Cunningham: No.

HENRY R. HOPKINS, being called and sworn
446 on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. What is your address, Doctor? A. 433 Franklin Street.

Q. You are a regular graduate of a medical col-
447 lege of this state? A. I am.

Q. Are you both a practicing physician and surgeon? A. I am.

Q. How many years have you been engaged in the practice of medicine and surgery? A. Fifty-three years.

448 Q. In what locality? A. In the city of Washington and in the city of Buffalo.

Q. How long have you been in the city of Buffalo? Fifty years.

Q. What professional positions have you held, Doctor, during your professional career? A. I
449 taught diseases of the nervous system fifteen or twenty years in the University of Buffalo. I taught Hygiene in the University of Buffalo ten or fifteen years. I was on the Board of Censors of the Medical Society for the County of Erie some thirty or forty years and when I retired I
450 was made honorary life member, the only honorary life member ever made, which distinction I still have the privilege of holding. I was president of the Medical Society of the State of New York, its ninety-seventh president, in 1903.

Q. Doctor, have you in your later years been actively identified with the Medical College in Buffalo? A. I have. I retired by reason of age. I was retired—pardon me.

Q. For the last fifty years you have been practicing medicine in Buffalo? A. Yes.

Q. Are you in active profession at the present time? A. I am.

Q. During these years you made your usual calls? A. Yes. I saw some very sick people.

Q. You are now actively engaged in your profession notwithstanding your age? A. Notwithstanding my seventy-four years.

Q. Now, doctor, state whether or not you are familiar with the hygienic and sanitary conditions of restaurants in the city. A. I am from personal experience, from observation of patients' lives, their work and from my visits there.

Q. Are you familiar with the conditions surrounding the employment of waitresses and employees in restaurants in this city. A. I have some knowledge of that.

Q. What do you mean by some knowledge? A. I have had a number of personal friends and patients who were waitresses.

Q. Have you visited restaurants while waitresses were engaged in their usual occupation? A. Very frequently.

Q. Waiting upon customers? A. Yes, sir.

Q. Are you familiar with the duties envolved upon waitresses and other females employed in restaurants? A. I am.

Q. Are you also familiar with conditions that obtain outside of Buffalo, in Albany, Troy and other cities that you have frequently visited? A. I am.

Q. State whether or not in your opinion there is anything in the employment or conditions sur-

rounding waitresses or females employed in res-
456 taurants that is deleterious to their health? A. Not the slightest in the world.

Q. Supposing that employment were continued until after ten o'clock at night within reasonable hours as the statute provides, that is, nine hours a day, but that it ran from some time in the after-
457 noon until after ten o'clock at night, what would you say to that? A. I would say it was a perfectly healthful and proper occupation.

Q. Or supposing the nine hours were to begin before six o'clock in the morning, from five or half-past five in the summer mornings with the
458 sun up and everything bright, is there anything in that hour of employment that is injurious? A. Not at all.

Q. You have read this Chapter relating to this subject in controversy here? A. I have.

Q. Now, Doctor, tell us whether or not there is
459 anything in the employment of females in restaurants before six o'clock in the morning or after ten o'clock at night that is any more injurious to their health than their employment in hotels at these hours? A. Not in my judgment.

Q. Is there anything in the employment of
460 females in restaurants as waitresses which is any more injurious to their health than the employment of such females as singers or performers? A. There is not.

Q. In restaurants? A. There is not.

Q. Or that is more injurious to their health than the employment of females in connection with dining-rooms and kitchens in hotels? A. Nor in

the employment of some woman in your kitchen or in my kitchen.

461

Mr. Cunningham: I ask to strike out the answer as not being responsive.

The Court: It is not responsive. Strike it out.

Q. There is not, you say? A. No, there is not. 462

Q. Isn't it a fact, Doctor, that the employment of females in restaurants as well as in hotels is a normal employment of females? A. It is a perfectly normal occupation.

Q. State whether or not it tends to longevity? A. It tends to prolong life and make people 463 happy.

Q. Is there any other occupation, Doctor, that occurs to you that is any more likely to produce healthfulness and longevity? A. Yes.

Q. What? A. Work on the farm.

Q. After that? A. No. 464

Q. You have testified, Doctor, to being familiar with restaurants. I will ask you if your familiarity with them extends back over your professional career in Buffalo ten years or more? A. I should say it extends back forty years.

Q. Under the Public Health Law they are all 465 supervised, and rigidly inspected, are they not? A. They are.

Q. Admirably supervised in every way? A. Yes, sir; in my judgment they are.

Q. By the Department of Health? A. Yes, sir.

Q. From your familiarity with the operation and conduct of restaurants and the duties devolving upon female employees during this year, state

whether or not you have noticed anything in those
466 conditions or that employment that is deleterious to health? A. I have not; no, sir.

Q. Would you not say, Doctor, from all the information which you have derived from your long experience, from your acquaintance with the employment of females in restaurants that it is as
467 wholesome a vocation as any employment possible in the city? A. I would.

Q. Since you say it tends to promote longevity you would say that they live as long in that occupation as any other occupation in the world? A. Yes.

468 Q. Now, Doctor, is there any reason that occurs to you why the Legislature should limit the hours of employment of females in restaurants to not before six o'clock in the morning or after ten o'clock at night?

Mr. Cunningham: I object as calling for
469 a conclusion of the witness.

The Court: How is the Doctor competent to testify to that?

Mr. Hill: Because he is an expert.

The Court: As involving the question of
470 morals and all that?

Mr. Hill: Yes. I suppose there is no man in Western New York that has had more experience in promoting health legislation than Doctor Hopkins.

The Court: I know. But you are asking him to determine the mind of the Legislature in passing this.

Mr. Hill: Judges of the Supreme Court said in one case that they were not inclined to disturb a conclusion reached by a man competent to speak on these matters. I think that since we have produced perhaps the best man in the state to speak, that the evidence would be proper. It seems to me that it might be received and then if it is not proper we can strike it out afterwards. 471 472

(No response from the witness in reply to the last question asked.)

Q. Is there anything from your experience and knowledge of conditions of employees in restaurants that is so injurious to their health that it would justify the passing of any such Act as this? 473

Mr. Cunningham: It seems to me that calls purely for a conclusion of the witness. 474

The Court: If that question is modified in this way. Instead of using the words would justify—

Mr. Hill: I will change the question and ask it in this way. 475

(No response from the witness in reply to the last question asked.)

Q. Now, Doctor, from your wide experience as apracticing physician, covering a period of fifty years or more, and being familiar with the conduct, hygienic and sanitary conditions of restaurants and the duties devolving upon female employees in restaurants, is there anything in any or

all of these conditions so inimical to health of fe-
476 male employees as to justify the limitation by the Legislature of their employment so that they may not work before six o'clock in the morning or after ten o'clock in the evening?

The Court: I think the only word objectionable would be the word justify.

477

(No response from the witness in reply to the last question asked.)

Q. Doctor, from your wide experience as a practicing physician, covering a period of fifty years or more, and being familiar with the con-
478 duct, hygienic and sanitary conditions of restaurants and the duties devolving upon female employees in restauronts, is there anything in any or all of these conditions so inimical to the health of female employees as to necessitate or require the limitation imposed by this Legislature in this
479 Act?

The Court: I will allow that question.

Mr. Cunningham: Exception.

A. There is not.

Mr. Hill: That is all.

480

CROSS EXAMINATION by Mr. Cunningham:

Q. Doctor, have you made a general study of the employment of women at night? A. I have never written a book on that subject. I have been familiar with it.

Q. Have you made a general study of employment of women at night? A. I have.

Q. To what extent have you studied the question? A. I could not say. 481

Q. As a matter of fact, you have not made a study of it specifically at all, have you? A. Oh, yes. I have. I have had patients who have been employed at night and I have studied the question of night employment upon health both of men and of women. 482

Q. How many such patients have you had in the course of your fifty years' practice? A. Hundreds.

Q. What line of occupations have they represented? A. Employees in stores, employees in restaurants, employment in hotels, employees in private families— 483

Mr. Hill: Q. Telephone employees, Doctor? A. Yes. Telephone clerks.

Mr. Cunningham: (Resuming)

Q. Employees in factories, too? A. I can't recall any that I have had. 484

Q. You have not extended your investigation in your general study of employment of women at night in that field which embraces factories at all? A. I can't recall just at present any special work I have done for factory employees.

Q. So you don't know what was the basis of the Legislature which forbid the employment of women in factories after ten o'clock at night or before six in the morning? A. Oh, yes, I do. 485

Q. How are you familiar with that? A. Because they are general matters pertaining to sanitary conditions, hygienic matters. You will find it in our text books and there are dozens of papers written upon them.

Q. Isn't it a fact that the basic principle argued
486 for in this legislation, and which has been sustained by the Courts ,in relation to the employment of women in factories at night has been the effect upon their physical make up in the matter of child birth? A. Very slightly.

Q. As a physician of many years standing,
487 what is your opinion of the effect of continuous night work upon women?

The Court: What do you mean by continuous, counselor?

Mr. Cunningham: During a long stretch of time.

488

A. It is beneficial.

Q. Would you say it is more beneficial than employment during the day time? A. No.

Q. Would you say it was less beneficial? A. No, I would not.

489 Q. You mean that one employment balances the other? A. Yes. Employment is very beneficial.

Q. What? A. Yes. Employment is very beneficial; it is healthful and prolongs life.

Q. Are you not confusing the general idea of keeping busy with the idea of employment at any
490 specific time during twenty-four hours? A. No. Keeping busy is a matter of very slight importance. Employment is something very important.

Q. So you would say, then, that a person who works or who is employed steadily at night is just as well off as a person who is steadily employed during the day time? A. Yes.

Q. Isn't it a fact that night time is the natural rest time for human beings? A. It is.

Q. It is the time when noise in cities is less and conditions make for a less broken rest? A. After two o'clock. 491

Q. Natural sleep time is night time, isn't it, Doctor? A. It is.

Q. Yet as a physician and an expert, you are testifying here that employment of women during the night time, which is the natural time for rest, is not at all deleterious to their health? A. I am glad to do so. 492

Q. Isn't it a fact that rest during the day time is more likely to be broken than rest during the night time? A. It is.

Q. If a woman is pregnant will not loss of sleep tend to have a bad effect upon her? A. She needs a normal amount of sleep, a pregnant woman. 493

Q. In your treating cases of waitresses have you ever ran across a pregnant waitress? A. If so I have forgotten it.

Q. I mean by that married women. A. Yes.

Q. Who are pregnant? A. I don't remember any such case now. 494

Q. Your answer is that you have no recollection of it? A. No. I have no such recollection.

Q. In such a case would it not be more beneficial to their health if they had day work instead of night work? A. I don't think there would be very much difference. 495

Q. Did I understand you to say, Doctor, in answer to Senator Hill's question, that employment as waitresses at night tends to prolong the life of the employee? A. I so said.

Q. Just how? A. Because it is employment. That is what she must have to live.

Q. If she was employed the same length of time
496 in the day, would that tend to prolong her life just as much? A. It would.

Q. There is nothing in your answer to that question which advocates night employment of females rather than day employment, is there? A. Not in the least. It was not so intended.

497 Q. You said that you have read this statute in question? A. Yes. I have it.

Q. You realize, of course, that it applies to all restaurants throughout the state in cities of the first and second class, to which it is practically limited, do you? A. I do.

498 Q. Your familiarity with restaurants is largely in the western part of New York? A. It is larger than it is in the eastern.

Q. Have you had any extended experience with reference to restaurants in New York City? A. I have.

499 Q. How long ago is that? A. I have for the last fifty years.

Q. To what extent? A. Oh, a week or two.

Q. You mean that you went down to New York especially to investigate restaurants? A. Oh, no. I went down to New York and visited a restaurant two or three times a day.

500 Q. You mean you were an ordinary guest in a restaurant? A. Yes.

Q. You did not investigate conditions in the kitchen under which they worked, did you? A. I did not.

Q. You simply saw them as they acted as waitresses? A. Yes.

Q. You at no time carried on your investigation so as to bring within the scope of your observation the conditions under which women were working in the kitchen? A. No. 501

Q. So you have no knowledge about those conditions? A. Oh, yes I have.

Q. By personal observation or by hearsay? A. By the records of the city authorities that supervise and control them. 502

Q. As I said, you have no personal knowledge of them? A. Not much.

Q. You know this statute, which is the subject of inquiry here, applies not merely to waitresses but all females who work in connection with a restaurant? A. I saw there were several groups there. 503

Q. So if a woman works in the kitchen as a dishwasher or cook, it is applicable to her as well as to the girl who brings you the food? A. I think the word is employees. That includes the whole of them. 504

Q. Your testimony, as you have given it in answer to Senator Hill's question, relates almost entirely to your experience with girls who wait upon tables? A. Largely.

Q. Conditions vary in different restaurants, do they not? A. No. I can't say that. They are much the same. 505

Q. Some are what we might describe as first-class and others are second and third-class. A. I believe there are, yes.

Q. So the conditions you might find in a first-class restaurant might be altogether reversed in a third-class with poorer surroundings. A. That is possible, yes.

Q. Would you make any distinction from your
506 observation between the work of a woman as waitress in a restaurant and the work she would perform in a mercantile establishment behind the counter? A. I would. I would discriminate against working in a mercantile establishment.

Q. You think working in a store is more injur-
507 ious? A. Yes.

Q. In what way? A. Dust, dirt. There are a lot more objections in a mercantile establishment which you never find in a restaurant.

Q. What else besides dust and dirt? A. Tobacco smoke.

508 The Court:

Q. What places are you referring to now? A. Mercantile establishments.

Q. What do you mean by that? A. A clear case is the five and ten cent stores.

Mr. Cunningham: (Resuming.)

509 Q. Have you ever been in a restaurant where they have cabaret dancing? A. I have.

Q. Doesn't that raise a dust which is injurious to the health of those present? A. If the place is not sanitary and well kept it does. There are a lot of clean places.

510 Q. Have you never seen a restaurant in which there has been a lot of tobacco smoke from guests as they finish their dinners? A. I have seen some small ones.

Q. There is a chance of being just about as much tobacco smoke in a restaurant as in a mercantile establishment? A. Per individual, about the same, but you will scarcely ever see a hundred people in a restaurant at one time.

Q. I would depend a great deal on the size of the restaurant? A. Yes. 511

Q. Just as it would depend on the size of the mercantile establishment? A. Yes.

Q. You don't seriously mean to state that there is a great deal of tobacco smoke in a mercantile establishment at the present time, do you? A. Well, I think there is some. 512

Q. Are you not familiar with the fire laws of the state which prohibit that? A. No.

Q. Didn't you know there were such laws? A. No.

Q. Do you consider,—do you believe that night work for women in factories is healthful or injurious? A. Depending entirely upon the factory. Dusty factories are poor places to work in. Women are a little bit more susceptible generally speaking to disease than men. 513

Q. That would apply to day time work as well as to night time work, would it not? A. Just the same. 514

Q. What would you say in answer to my question relative to day time and night time? A. It is not especially different.

Q. Your testimony in your judgment as a physician is that night work for women is not deleterious to their health? A. It is not. 515

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

516 Q. Doctor, in relation to mercantile establishments where women are employed, have you noticed that they are on their feet moving around in continuous occupation or activity most of the time? A. I have.

Q. Have you noticed that they are thrown into
517 contact with numbers of people, whereas in a restaurant they have but one, two or three to serve at a table, within an hour? A. I have.

Q. Have you noticed that in a store or mercantile establishment they are called upon to exhibit their fabrics or whatever wares they are dealing
518 with, taking them down from the shelves and putting them back and all the time in action on their feet? A. I have.

Q. Now are these conditions the reason why you think employment in a factory or store for a woman is more injuries than in washing dishes, serving
519 a table or cooking a meal? A. They are.

Q. What is your experience, Doctor, with reference to the health of women in mercantile establishments or stores as compared with those employed in a restaurant as to healthfulness? A. My experience is that more people lose their health
520 in the first condition than they do in the second.

Q. In mercantile establishments than they do in restaurants? A. Yes.

Q. Isn't it very rare that any person loses their health either by washing dishes, cooking meals or serving guests in a restaurant? A. It is my experience, yes.

Henry R. Hopkins, for Deft., Re-direct.

Q. You notice this law is limited to non-employment of females in restaurants in cities of the first and second-class only? A. Yes. 521

Q. Are there any conditions surrounding restaurants in cities of the first and second class as distinguished from cities of the third class that occurs to you as a ground why the limitation imposed in Chapter 535 of the Laws of 1917 should be made? 522

Mr. Cunningham: I object on the same ground as before. It calls for a conclusion of the witness.

The Court: I think the question is improper. 523

Mr. Hill: Exception.

(No response from the witness.)

Q. Do you know of any condition surrounding restaurants in cities of the first and second class that distinguish them at all from cities of the third class? A. No. 524

Q. That makes them any more injurious to the health of their employes? A. I do not.

Q. Doctor, do you know of any occupation a woman can engage in aside from purely domestic service in her own house that is less injurious to their health in cities than the employment as waitresses, dishwasher, cook or performing other service in restaurants? A. I do not. 525

Mr. Hill: That is all.

RE-CROSS EXAMINATION by Mr. Cunning-
526 ham:

Q. Did I understand you to say that more mercantile employees get sick from their work than restaurant employees? A. That is my experience.

Q. You mean more in proportion to the num-
527 ber employed or more in actual number? A. I don't believe I could answer that. I am simply depending upon my experience. I have certainly seen many more.

Q. Whether it is proportionately more or not you don't know? A. I would not say.

528 Q. Isn't it a fact there a great many hundred more mercantile places than there are restaurants? A. I believe there are more.

Q. There are about ten mercantile establishments to one restaurant where they employ women? A. Possibly.

529 Q. So it would be rather natural that you would find more mercantile employees coming in or coming under your treatment than you would restaurant employees? A. Yes.

Q. Might that not be the natural thing why you are called upon to treat more mercantile em-
530 ployees than you are to treat restaurant employees? A. It is entirely possible, yes.

Q. You have stated in answer to Senator Hill's question that mercantile employees stand upon their feet more than waitresses, or to the fact that they are called upon to display their goods frequently throughout the day. Do you not know as a matter of fact that dishwashers stand upon their

feet continuously in carrying out their duties in the kitchen in connection with restaurants? A. For a time, yes. Half an hour at a time. 531

Q. They are on their feet just as many hours as continuous full trays come into the kitchen; isn't that so? A. Yes.

Q. Would not that sort of work be deleterious to their health? A. It would be a little bit trying. It is a little like work. 532

Q. To that extent there would be a parallel between mercantile employees who are compelled to stand on their feet working and the women who work in restaurants washing dishes? A. There would be. 533

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

Q. Doctor, a woman in a mercantile establishment is usually confined in a limited area and her movements are more or less circumscribed? A. Yes. 534

Q. She has not the freedom of action or movement that she has in a restaurant? A. No.

Q. In restaurants they serve a meal at a table and then there is a period of inactivity where they sit down and rest? A. Yes. 535

RE-CROSS EXAMINATION by Mr. Cunningham:

Q. Isn't it the same fact with reference to mercantile establishments as to periods of inactivity after a period of activity, where the employees sit

536 down? A. They have periods of inactivity, but they don't have so many customers in a restaurant.

Q. In mercantile establishments they are compelled under the statute to furnish seats for their female employees, are they not? A. I believe so.

537 Q. So the opportunities for mercantile employees to sit down are about the same? A. If it rains she can sit down.

RE-DIRECT EXAMINATION by Mr. Hill:

538 Q. As a matter of fact, a mercantile employee is active most of the time? A. Yes.

Q. The strain on a mercantile employee is greater than it is upon a person employed in an ordinary restaurant? A. That is my judgment.

539 Q. Isn't it a fact from your experience and judgment that there is no occupation less deleterious or injurious to the health than that of females in restaurants? A. That is a fact.

Mr. Hill: That is all.

Mr. Cunningham: That is all.

540 ———

JOHN D. YOUNG, being called and sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. What is your address? A. 46 West Huron Street.

Q. What is your business? A. Restaurant.

Q. In what place? A. 46 West Huron Street, Buffalo, and 78 Lafayette Avenue, Detroit.

541 Q. How long have you been engaged in the restaurant business in Buffalo? A. About seven or eight years.

Q. Have you been in that same location all this time? A. Yes, sir.

542 Q. Do you employ girls in your restaurant? A. Yes, sir.

Q. How long have you employed girls in your restaurant? A. Ever since I have been in business.

Q. In what occupations? A. Cooks, dishwashers, waitresses, and in the kitchen.

543 Q. In what proportion are they divided? A. At my place here there are three and four waitresses, one cook, one dishwasher, and one kitchen woman.

Q. How long have they been with you? A. Oh, some of them a year and a half or two years, some nine or ten months.

544 Q. Now state generally what they are willing to do as to the number of hours they work? A. We have regular hours, but at their solicitation I have frequently given them employment after hours in the restaurant.

545 The Court: Q. After hours? A. Yes.

Q. What do you mean by that? A. I mean that my regular hours at this place now is from six in the morning until eight at night and have been so for nearly three months. From six in the morning until nine thirty for breakfast, eleven

thirty to two for dinner and then they are off
546 until five. They go back again at five.

Q. What do you mean by after hours? A. After the regular stated hours. The regular hours were from six in the morning until eight in the evening. I have frequently had them there after those hours.

547 Mr. Hill: (Resuming)

Q. Do you find any dispostion on the part of the girls not to work after regular hours? A. Never.

Q. Now why is it that girls rather work in the evening than during the day in restaurants? A.
548 Because after nine or ten o'clock the theaters, lectures and other places of entertainment let out and people are passing back to their homes or elsewhere and drop in to get something to eat. The girls receive the biggest tips from these people.

549 Q. In the first place for their overtime work they get extra pay? A. Yes.

Q. At these particular hours when they are employed for this overtime the tips are larger, are they not? A. They are.

Q. So a girl will make more pay if she is per-
550 mitted to work her nine hours up to eleven o'clock or half-past at night than if her hours are from six to seven at night? A. Yes.

Q. In fact they prefer to work later? A. Yes, sir. I have frequently suggested employing extra help but they say that they would prefer to work themselves.

Q. If this law was rigidly enforced do you think it would be possible to keep our restaurants open

until eleven o'clock at night when our theaters close? A.I **do not.** 551

Q. Why? A. Because it would be impossible to secure competent help, other than women, for that purpose. Men waiters are not as competent as girl waitresses.

Q. Has there been any difficulty in securing such employees for restaurants during the past 552
few months? A. Yes. In instances where I have attempted to get men for extra work I have found it difficult. I could get men, such as they were, but not competent men in that line of work owing to the men having been taken in the draft.

The Court: Q. What about normal conditions? 553
A. In normal conditions I can secure men waiters, but they are not as competent usually and are a disturbing element to restaurant people.

Mr. Hill: (Resuming)

554

Q. Why? A. Because they are inclined to agitate and create demands that women don't do unless suggested by the men.

Q. Are they more or less addicted to intemperance, the men, at night? A. Yes; I think they are. 555

Q. From your experience as a proprietor of a restaurant have you noticed anything in the duties devolving upon your female employees that produces sickness or ill health? A. No, I never have.

Q. Do the girls come in regularly every day? A. Yes.

Q. They stay with you without having sick
556 spells? A. Yes, sir. I might add right here, there are certain exceptions sometimes when some girls like some men are inclined after finishing their day duties to go out on a lark and they get sick, not from their work but from dissipation.

Q. You don't know anything about the conduct
557 of restaurants that conduces to their ill health? A. No. On the contrary, I think it tends to make them healthy.

Q. What are the rush hours in a restaurant? A. Dinner and supper.

Q. Evening meals are scattered, are they not?
558 A. Yes, sir.

Q. So the evening work is lighter than it is at noon or at dinner from eleven to one or two o'clock? A. Yes.

Q. Until the theaters and such places are closed? A. Then they come in the pay good prices.

559 Q. Did you ever have girls complain that they were tired and unable to serve people in the evening? A. Not from their duties, no.

Q. Now, of course, before the law was passsed no girl was obliged to work unless she wanted to, but it was a matter entirely voluntarily on her
560 part? A. Yes.

Q. She could work or not, just as she choose? A. Yes.

Q. Now has the enforcement of this statute tended to close any restaurants in Buffalo? A. I don't know of my own personal knowledge whether it has or not.

Q. In summer or rush seasons when they have a large number of visitors in town what is likely

to be the effect of the enforcement of this statute? A. I think the result will be something of that character. 561

Q. Isn't it a fact if this law had been enforced a year of two ago when the Shriners were here in Buffalo it would have been impossible to keep the restaurants open late at night? A. It would have been, yes, sir. 562

Mr. Hill: That is all.

CROSS EXAMINATION by Mr. Cunningham:

Q. Mr. Young, what time do your women go to work? A. My cooks go to work at six o'clock, the dishwasher at seven A. M. and the waitresses at eight. 563

Q. What time does the cook quit? A. Eight o'clock.

Q. She works fourteen hours on a stretch? A. No. She works up until two o'clock, after dinner is over, then she is off until five o'clock. 564

Q. So her days begin at six in the morning and end at eight at night, a stretch of fourteen hours? A. No. She has—

Q. In that interim she has what you call a swing, as railroad men say, of time? A. Yes.

Mr. Hill: I don't know what that term is. 565

Q. During that period there is a time from two to five when she is off duty? A. Yes, sir.

Q. The dishwasher begins at seven and stops when? A. She is through at two o'clock. Then she is off until six or half-past six, and then she is on until eight.

Q. Those are her regular hours? A. Yes, sir.

Q. How much longer do they work? A. They
566 don't work any longer unless it occurs that I keep open later in the evening and at their own solicitation they remain over. Then they will work probably three hours.

Q. What time do you close? A. I close now at eight o'clock during the last year.

567 Q. So this statute doesn't affect you at all? A. It does not.

Q. You say that women waitresses are safer than men waiters? A. I think so.

Q. Why is it that in all hotels they have men waiters? A. I cannot answer that.

568 Q. Wouldn't it indicate to you that they are safer than women? A. No; I don't think so.

Q. Isn't it a fact that you have to pay men more than you do women? A. Yes.

Q. Isn't that why you prefer women? A. No.

Q. You say that you have women who work overtime and are paid extra? A. Yes.

569 Q. If you tried raising their wages so it would bring it up to what this extra amounts to and the tips do you think they would be glad to quit at reguar time? A. I don't know.

Q. You never tried it? A. No.

570 Q. You say that men are more likely to be agitators? A. Yes.

Q. What do you mean by that? A. I mean that they are more liable to become discontented and—

Q. Do you mean that they are more liable to organize? A. Yes.

Q. And form unions? A. That would not make any difference, but my experience is that men are more likely to create discontent.

Q. They form unions and make demands upon employers? A. Yes.

571

Q. Women do not do that as much? A. Not until the men induce them to.

Q. So it is advantageous to employ women so they won't form these? A. No. I don't agree with you. I think organizations are all right.

Q. You say that your employees never complain? A. No to my knowledge.

572

Q. Do you not find as a general rule that employees don't complain to their employers? A. Because I have usually given them fair compensation and fair hours.

Q. Haven't you found as a matter of fact that employees are a little bit afraid of their employer, so while they may grumble they don't go to him? A. There are some such cases, yes.

573

Q. Would not that explain the reason why your employees do not complain to you? A. There may be exceptions to all rules.

574

Mr. Hill:

Q. You don't know any reason why they should complain? A. No.

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

575

Q. You have no difficulty within the permissible hours to employ such help as you need? A. No, sir.

Q. They stay with you right along from month to month? A. They do.

Q. You have lived in this city a great many years, have you not? A. Since 1834.

Q. You have had a great deal of experience in
576 the affairs of Buffalo, have you not? A. I certainly have had.

Q. You have been more or less acquainted with the restaurant business all your life time? A. Yes, sir.

Q. Isn't it a fact you used to live down in
577 the second ward just east of Main Street on Swan when that was the aristocratic part of this town? A. Yes.

Q. You have been more or less in touch with restaurants all this time, have managed them, eaten in them, and so on. A. That is the idea.

578 Q. They were kept open what hours usually? A. If I recall, many of them were open all night, then again others were open until midnight.

Q. Isn't it a fact that it is necessary to keep restaurants open all night in the city of Buffalo? A. I think so, as the city is growing.

579 Q. Are there not many people who depend on the night meal? A. Incoming people off of trains, etc., people coming home.

Q. Men employed about the city? A. Yes.

Q. About newspaper offices and street railway lines? A. Yes.

580 Q. From your entire experience both from observation and operation of restaurants, what do you say as to the healthfulness of employment of women in restaurants? A. Well, I am not a physician, but my experience with myself I find the more work I do the better I feel.

Q. No. Just answer my question. A. I find that it is a healthful employment.

Q. Is there anything about dishwashing or cooking or other work in a restaurant that is any more injurious to a woman than waiting on tables? A. Well, I don't think so. There is more of an odor in the kitchen, but mostly of food and it is not injurious. The dining-room is supposed to be free from those things. I don't know anything more that is deleterious to their health. 581 582

Q. Are restaurants inspected right along regularly? A. Yes.

Q. By whom? A. By the Board of Health inspectors.

Q. Of the city? A. Yes.

Q. If things are not all right they give directions as to what shall be done? A. They are supposed to do that if they do their duty. 583

Mr. Hill: That is all.

RE-CROSS EXAMINATION by Mr. Cunningham. 584

Q. Mr. Young, you have said something about the necessity of keeping restaurants open for late night callers. There is nothing to prevent restaurants being run by men that time of night? A. No.

Mr. Cunningham: That is all. 585

RE-DIRECT EXAMINATION by Mr. Hill:

Q. Is it possible to get men? A. That is the difficulty. There is difficulty at the present time to secure competent help among men.

Q. He asked you a few minutes ago why it was there were so many men in hotels? A. Yes, he asked me that question.

Q. Isn't it a fact that the waiters in hotels in the
586 cities are largely young men coming to this country in the first place and are foreigners and they are trying to get a living until they can get a footing somewhere else? A. Yes. A great many Germans and others.

Q. All nationalities? A. Yes.

587 Q. Isn't it a fact that in many of the hotels where men are employed you find that they are mostly young who have come from a foreign country to make this country their home? A. Yes; that is my observation.

Q. They will work cheaper than other men? A.
588 I have never employed men sufficiently to know, but I understand that is the case.

Q. Isn't is a fact that where men are employed in hotels it is only in high-class hotels where they can afford to pay large wages? A. That is what I have noticed.

589 Q. In restaurants like yours and thousands of restaurants in this state you could not employ that class and serve the class that you do? A. I would not unless I was compelled to.

The Court:

Q. If you employed men you would in-
590 crease the prices to your customers? A. Yes.

Mr. Hill (Resuming.)

Q. You feed a great many girls who are employed in shops down town? A. Yes; and dry goods stores.

Q. They depend on the noontime lunch to tide them over until they get home? A. Yes.

Q. They would not be able to go in a place like the Iroquois and pay three dollars for one steak? A. No. 591

Q. In order to give fair service at reasonable rates you are obliged to employ women? A. Yes.

Q. If this law is enforced you have either got to close your restaurants or raise the prices? A. If the law is enforced,—well, it doesn't affect me directly. It does indirectly because help is so difficult to find now. 592

The Court:

Q. What proportion of your customers are women? A. I should think possible thirty per cent. 593

Q. Thirty per cent women and seventy per cent men? A. Yes.

Q. Women employed in stores? A. Yes; and in rooming houses.

Q. Women who are dependent upon themselves for support? A. Yes. 594

The Court: Anything further?

Mr. Hill: No, I think not.

Mr. Cunningham: That is all.

595

JOHN D. YOUNG, recalled for further cross examination, testified as follows:

CROSS EXAMINATION by Mr. Cunningham:

Q. Isn't it a fact that waiters in large hotels are paid very little and depend mostly on tips for

their remuneration? A. From hear-say I know
596 there are some who receive regular salaries in large hotels. In New York I understand that they receive nothing but tips.

Q. Don't you know as a restaurant keeper that in some places in hotels waiters pay the head waiter for the privilege of working in the dining-
597 room? A. I have heard so.

Q. Really working for nothing and depending entirely upon their tips? A. I don't know that.

The Court: You mean men?

Mr. Cunningham: Yes.

598 Q. What do you pay your waitresses a week? A. Nine dollars.

Q. Have you any idea how much their tips run to in a week? A. Yes.

Q. How much? A. Last week one of them made twenty-six dollars with her salary, twenty-
599 six dollars and some cents.

Q. How many waitresses have you? A. Three.

Q. Do they all average that? A. No. Because two of them only work part of the day.

The Court: Q. They have their meals besides? A.
600 Yes.

Q. Twenty-six dollars a week and her meals? A. They won't average that, but she made that last week.

Mr. Hill:

Q. There are some restaurants where they average right along twenty dollars a week? A. Yes, I think there are.

John D. Young, Recalled, for Deft., Cross.

The Court:

Q. They won't average that with you? A. I don't know; but I know that occasionally they make good tips. Occasionally they tell me what they make. 601

Mr. Cunningham: (Resuming)

Q. When the present national situation is relieved and the war is over there will be no difficulty about getting men to fill these places, will there? A. I don't know. 602

Q. Previous to the war there was no difficulty about getting men to work in restaurants, was there? A. Of certain men, yes. We could get men who would tell you they were good waiters, but get them in there and we would find they were not. They were clumsy, awkward and incompetent, and I would not have them around. 603

Q. The present national situation is to blame for the difficulty which you at present experience in getting men to fill these places? The present national crisis is to blame for that? A. Largely so. 604

Q. When the present national crisis is over the situation will probably resume normal condition as to supply and demand? A. That is to be seen when that occurs. 605

Mr. Cunningham: That is all.

The Court: Q. I would like to ask you
606 a question in reference to the topic that Mr. Cunningham has interrogated you about. If you employ men do you have to employ them continuously throughout the day, or can you employ them during the prohibited hours? A. No, They usually want
607 to engage for the full time. If you tell them that you would like to have them work for half a day, they would say no. That is my experience.

Q. You find it difficult to supplant women by employing men to work after ten o'clock
608 at night? A. Yes.

Q. In case you want to keep open? A. Yes.

Mr. Hill: Q. Are you not aware of the fact that for the last six months or from the
609 the beginning of spring last year there has been an extraordinary demand for male employees in various industries in this city that took them away from restaurants and offices and into the service of the army and so on? A. Yes.

610 The Court: Q. That has to do with war conditions? A. Yes.

Q. Conditions which arose from the declaration of war? A. Yes.

Q. Don't you think with the number of men that are being called into the service and into various industries that has to do

with military life that it is going to deplete the male force to such an extent that it will be years again before we will be able to employ them as plentiful as we could before? A. It would seem so. Of course, I can't answer that directly. 611

Q. Are you aware of the fact that they are employing ladies to run street cars in New York? Yes, sir, I am. 612

Q. That they are employing them in all kinds of munition factories? A. Yes, sir.

Q. Industrial conditions are such that it is going to be very difficult for restaurant keepers to supply their force with men? A. Yes, sir. 613

Mr. Hill: That is all.

Mr. Cunningham: That is all.

614

EDWARD H. EDDY, being called and sworn on behalf of the defendant, testified as follows:

DIRECT EXAMNATION by Mr. Hill:

Q. What is your address, Mr. Eddy? A. 291 Washington Street. 615

Q. What is your business? A. I am a restaurant keeper.

Q. In Buffalo? A. Yes.

Q. How many restaurants do you run in Buffalo? A. Two at the present time. At one time I had four in Buffalo and one in Rochester.

Q. How long have you been engaged in the

restaurant business in Buffalo? A. Seventeen
616 years today.

The Court: Q. Where is your place of business? A. 291 Washington Street. I have another one on Exchange Street that I am interested in. I sold that one but have not received all of my money as yet.

617

Mr. Hill: (Resuming)

Q. Tell what effect this statute has on any of your Buffalo restaurants. A. I closed my place at 291 Washington Street last year in October at ten o'clock, and it has been closed at ten o'clock
618 every night since until six o'clock in the morning until now.

Q. Why? A. I was unable to get help to operate it, help that I would care to engage.

Q. How many people do you serve in your different restaurants or how many did you serve until this law took effect? A. Up to the first of
619 October I probably served twenty-five hundred people in twenty-four hours in the three places.

Q. You mean the last day of September, I take it. A. Yes. The first day of October.

Q. In other word, you closed your Washington Street restaurant from ten o'clock at night until
620 six o'clock in the morning from the last day of September? A. Yes.

Q. In order to comply with the law? A. Yes.

Q. Have you opened it at all since then during those hours? A. No. It has been locked from ten o'clock at night until six in the morning.

Q. How many people did you serve prior thereto from ten o'clock at night until six in the morn-

ing? A. Anywhere from two hundred and fifty to four hundred at the Washington Street restaurant. 621

Q. Did you close one or more than one? A. I closed one and disposed of another.

Q. You sold one? A. Yes.

Q. Why? A. Because I could not get help to operate it under the provision of the law. 622

Q. In reference to the third restaurant you were able to get male help for that? A. At 7 East Genesee Street my son takes care of that. We keep it open nights with male help, but we have great difficulty in securing help. None of the men stay with us very long and we are securing new help right along. 623

Q. Why? A. Because they are so uncertain. The majority of young men who are willing to work in restaurants at the price we can afford to pay them are not very satisfactory. When they get two or three dollars they go out and get intoxicated. 624

Q. How many times has your help shifted since October in your restaurant? A. I don't know. None of them are there now that were there in October except an old man who has been acting as night cashier. The others are changing continuously. They work a few nights and then they don't show up any more, or if they do show up they come in and say, "I wish to quit. I want to draw my money." Then my son will hustle around and get some one else. 625

Q. Whereas prior thereto when you were permitted to employ women did you have any such

experience? A. No. Up to the first of October
626 when I was permitted to employ women I had practically no trouble. I kept three women on duty there in the dining-room all night and another dishwasher in the kitchen.

Q. Did you keep open all night? A. Yes. I had very little trouble. In my Washington Street
627 place it was the same way. I had a women in my Washington Street place who had charge there. She had been there in charge for over three years. I had two others that had been with me for some time. In Washington Street I kept three waitresses in the dining-room all night, a cook
628 and a dishwasher, and on Saturday nights and rush nights I had additional help because five people could not take care of the business, but when the new law went into effect I was compelled to close the place at ten o'clock, and have done so ever since.

629 Q. Would these women have been willing to continue in your service after the first of October if the law had not prohibited it? A. Every one of them worked up until the last minute and quit because the law compelled them to.

Q. And lost their position? A. Yes, some of
630 them that I didn't have positions for in the daytime. Some of them shifted to day work, the most desirable ones, and the rest lost their position.

Q. You had a regular day force in addition to these women? A. Sure.

Q. When the time came to close under the law, you kept on your day women right along but had to let the others go? A. In my Washington Street place when the new law went into effect I

revised my system all around my places so as to close at ten o'clock. We work eight hours. A 631
bunch comes on at six and works until two. Then they finish and another bunch comes on at two and works until ten at night, when they go home and the door is bolted. Outside of that they have their meals and their rest. In fact, they work about seven hours. 632

Q. About how many hours do the different shifts work? A. Seven hours.

Q. Do you think it will be possible to keep restaurants in the city open during the coming summer to supply the demand for meals to those who come here as they do in the summer to visit 633
the Falls and city if this law is rigidly enforced?

Mr. Cunningham: I object to that.

The Court: Objection overruled.

Mr. Cunningham: Exception.

A. I think it is going to be a difficult matter to 634
keep the places going. I think we are going to have a lot of trouble.

Q. Do you know of any other restaurants that have closed on account of the law, besides your own? A. No, I do not. The place I ran on Ex-
change Street I turned over to two women who 635
had been working for me nights. One had been in my employ for ten years and the other one for three years. The law would not permit them to work for me, but they could work those hours for themselves. I said: "Girls, you have been with me for a long time; you have been nice and faithful. I cannot operate the place any more un-

der the new law. You can have it if you want it."
636 They bought the place from me and are operating it under that plan now. When I get the balance of my money, I am out of it.

Q. You sold it to them? A. Yes.

Q. I suppose they do their own work? A. They are operating it for themselves the same as they
637 used to for me.

Q. How many of them? A. There are two of the women interested. The others are some employees. Those two are the owners.

Q. They work during the prohibited hours? A. They work to suit themselves.

638 Q. About what percentage of your patrons are women? A. A very few from the dry goods stores. Almost all are the middle class of working people.

Q. Who are they that take their meals at night? A. People who work nights. People from the
639 post office, printing offices, railroad men, night watchmen, people who work in Ellicott Square nights and take care of the machinery, women who clean the offices nights in Ellicott Square. There are a hundred of them, probably, who come over to my place just before ten o'clock every evening
640 with their buckets.

Q. Prior to the time that you closed they were there right along regularly? A. These Ellicott Square people come over every night just before ten o'clock to get their coffee, but there are a large number of people who work nights that are out now, people from the Statler Hotel, people from the post office, etc.

Q. They all come up town for their lunch? A. They have got to have some place to get a lunch during the night. 641

Q. It is your estimation that they used to visit your restaurant prior to your closing? A. We were so busy all night that we had to keep five people there right along to take care of the trade.

Q. What do you say as to the healthfulness of the employment of women in restaurants? A. My experience has been that it has been very healthful. My judgment is that it is much more so than department stores employment, for the reason that in department stores the girls are required to stand behind a little counter, possibly for a long time in the same position, whereas a young lady in a restaurant is moving around about the place all the time. If she wants a cup of coffee, she goes and gets it. She is never hungry as she always has plenty to eat. 642 643

Q. You spoke about one female employee being with you for ten years? A. Yes. 644

Q. I suppose you have had them for various periods? A. Yes. All the way from one day to ten years. Some I have had for five years and one young woman has been with me for ten years.

Q. What did you find as to her condition of health—the one you have had with you a long time? A. The one who worked for me the longest is the one who had charge of the place at No. 12 Exchange Street. She is down there now. 645

Q. Were they subject to sick spells during this terms of employment? A. Nothing unusual. I have had some working for me for five, seven and eight years. They left me to get married. They

met some desirable man and got married. One
646 young woman who worked for me eight years came in to my Washington Street place the other day to talk things over. She told me of her present condition. She said: "I have got three small boys." She appears to be perfectly healthy after working eight years.

647 Q. Do you think that women prefer to work in restaurants rather than in hotels? A. I can't answer that question.

Q. You had no difficulty in getting competent female help for such hours as you needed them prior to the passage of this law? A. I have had very little difficulty in getting female help.

648 Q. You have had that same experience with your restaurant in Rochester? A. Yes. I conducted a place in Rochester for three years and nine months. I had very little trouble there.

Q. Did things run along normally there the same as they do here in Buffalo and you had the
649 same sort of service there? A. Yes.

Q. And fed several hundred people during the day? A. Yes.

Q. You ran your restaurant all night there? A. Yes.

Q. How many shifts did you have there? A.
650 Well, I had two shifts, but some worked longer hours than others. We considered from seven in the morning to seven at night the day shift and from seven at night to seven in the morning the night shift, but they came on at different hours and got through at different hours.

Q. Now during that period of time there is always a period when there are no activities? A. It

is very slack from half-past nine to half-past eleven and then probably from two thirty to four thirty.

Q. Then during the evening— A. The evening trade at my places is quite steady until about one o'clock. From one to five it would be light. At five o'clock the working men begin to come in. My trade is mostly working people who go to work at seven o'clock. Along about half-past five they begin to come in to get their morning meal.

Q. What would be the condition in a city like Buffalo and all first-class cities if there were no restaurants open after ten o'clock at night until six in the morning?

Mr. Cunningham: I object as calling for a conclusion and not within the issue in this case.

The Court: I will allow it.

Mr. Cunningham: Exception.

A. Well, I think it would go back to the condition that prevailed before any restaurants were open when they had lunch wagons on every corner where you could go in and get buns and a cup of coffee.

D. Do you mean that there are lots of people who must have food at night? A. They must have it or go hungry.

Q. There are a great many people whose occupation is night occupation? A. Yes.

Q. They must have food? A. Yes.

Q. How many people do you suppose you feed
656 at your Washington Street place every night? A. Probably two hundred and fifty to four hundred. It varies, of course. We kept five people there all night.

Q. Isn't it a fact that restaurants running all night are doing a somewhat similar business? A.
657 Probably.

Q. I mean in proportion to their day business? For instance, if they had one hundred per cent. day business, what do you think would be the proportion of night business? A. I figure sixty per cent. for the day and thirty-three per cent. at
658 night.

Q. About one-third as much at night as you have during the day? A. Yes, about that. I should say.

Q. Do you think that rule applies in other cities? A. The only way I can judge is from my
659 own experience. About one-third of my business was done at night, from seven at night to seven in the morning.

Mr. Hill: That is all.

CROSS EXAMINATION by Mr. Cunningham:

660 Q. At the present time there are a number of restaurants in the city running after ten o'clock at night? A. I believe so.

Q. Do you know whether or not they are employing women in the course of their operation after ten o'clock at night, or men? A. I guess they are run in different ways.

Q. Do you know there are a number of restaurants in the city which run after ten o'clock at

night with male help? A. Restaurants like the Baltimore Lunch are run with male help. 661

Q. So there are restaurants that run with male help to feed the people who require being fed? A. Yes. But they get big prices for their service.

Mr. Hill: Q. It costs a great deal more? A. Yes. The dear public has to pay for everything. 662

Mr. Cunningham: (Resuming)

Q. You say that you closed one of your restaurants where you served upward of four hundred people? A. I say from two hundred and fifty to four hundred. 663

Q. You close that nights? A. I close it from ten at night until six in the morning.

Q. Because you could not get proper help? A. Yes. I could not get the help I would care to place in there and leave them.

Q. Was the profit on the two hundred and fifty to four hundred meals, which you had been in the habit of serving, so light that you preferred to lose it rather than to pay the salaries you would have to to keep it open? A. To pay the salaries I would have to pay to get desirable men would probably be so small a profit there would have been no object in keeping it open. 664 665

Q. So after all it comes down to the question of condition rather than observing the law? A. That is what we are all in the restaurant business for, for the money the same as you are in the law business.

Q. So you could operate it at less profit? A.
666 We probably could have operated it at no profit, which we don't any of us wish to do.

Q. You have never had any medical training, have you? A. No.

Q. So in expressing the opinion you gave as to the health of women who work for you, that was
667 simply your own opinion as a layman? A. It is my opinion formed from my seventeen years 'experience. I have had a number of women work for me both during the day and during the night, and those that worked for me during the night were just as healthy, as I observed, as those who
668 worked for me during the day. I didn't see any difference.

Q. You are not an expert in the medical line? A. No.

Q. This is simply the result of your observation? A. Yes, in my seventeen years' ex-
669 perience.

Mr. Cunningham: I would like to make a motion at this time to strike out all the testimony of Mr. Eddy on the ground it is incompetent.

The Court: I will deny the motion.

670 Mr. Cunningham: Exception.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

JOHN C. FLYNN, recalled on behalf of the defendant, testified as follows: 671

DIRECT EXAMINATION by Mr. Hill:

Q. You have been in touch with the employment of females in hotels, have you not, to some extent? A. Yes.

Q. Do you know anything about the duties of females employed in hotels such as those mentioned in the statute? 672

Mr. Cunningham: As I gather the trend of the testimony about to be introduced, may I ask to be permitted to preserve my motion instead of making it right through? 673

The Court: Yes.

(No response from the witness in reply to the last question asked).

Q. You know something about the relative duties of females employed in hotels, in the kitchen and so on, as compared with their duties in restaurants? A. Yes, sir. 674

Q. Do you know of any special reason why women should be employed in hotels at all hours of the night and denied employment in restaurants?

675

Mr. Cunningham: I object as incompetent and calling for a conclusion.

The Court: I think I will allow him to answer.

Mr. Cunningham: Exception.

A. No, sir.

Q. What do you say as to the comparative
676 hardships of women employed in hotels in the kitchen and dining-room as compared with the hardships of those employed in restaurants? A. Why, I should say it would be easier for a girl to work in a restaurant than it is to work in a hotel, especially waitresses.

677 The Court: Q. Why?

A. Because the kitchens in most hotels are down stairs in the basement. Take the Lafayette Hotel on Washington Street. The waitresses have to go way back to the back end of the building, down stairs, then back in the base-
678 ment up to the front towards Washington Street and get their orders and then make the same trip over again up to the dining-room, which would kill an ordinary girl. The girl who works in a restaurant—

679 Q. The general work should be harder for her? A. Yes.

Mr. Hill: (Resuming)

Q. The dining-rooms in hotels are ordinarily separated from the kitchen? A. Yes.

Q. For more or less distance as well as
680 down a flight of stairs sometimes? A. Yes.

Q. In case they are not served with a dumb waiter, they have to go down a flight of stairs? A. Yes.

Q. So the work in hotels in walking across the dining-room floor and down stairs in the building is greater work than it is in the serving of guests in restaurants? A. Yes.

Q. Where they are easily in close touch with the kitchen? A. Yes.

Q. What other things occur to you as making it more burdensome for a woman to work in a hotel than in a restaurant? A. I cannot say there is anything that I have taken notice of outside of being so far away from the kitchen. 681

Q. Do women, from your observation, prefer to work in restaurants rather than in hotels? A. Well, it seems to be a case where the men waiters have the hotels to themselves and the girls have the restaurants to themselves. It seems that men waiters prefer hotels and the girls prefer restaurants, or it is possible that the hotel management does not want the girl and men waiters to mix. 682

Q. So it is uncommon for girls to be employed in hotels as waitresses? A. Yes. 683

Q. Especially in cities of the first-class? A. Yes.

Q. Isn't it a fact that in our large cities of the first and second-class, such as Buffalo, New York, Troy, Albany, etc., that ninety-five per cent. of the waiters are men and boys? A. Yes, sir. The majority of them are foreigners, too. 684

Q. Many of them are foreigners? A. Yes, sir.

Q. It is very unusual to find American women being employed as waitresses in hotels, is it not? A. Yes, sir. 685

Q. Ordinarily these men waiters in the hotels do not speak the English language hardly intelligibly? A. No, sir.

Q. They speak most every other language than English? A. Yes.

Mr. Hill: That is all.

John C. Flynn, Recalled, for Deft., Cross, Re-direct.

686 CROSS-EXAMINATION by Mr. Cunningham:

Q. This general work done by waitresses, or cooks, or dishwashers in hotels does not differ from that she does in restaurants, does it? A. No, sir.

687 Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

Q. Isn't it a fact that girls in hotels who carry heavy trays upstairs and go a long dis-
688 tance have a hardship that girls in restaurants don't experience? A. Yes, sir.

Q. Isn't it a fact, generally speaking, that in restaurants the kitchen and dining-room are in close proximity, whereas in hotels they are usually separated a long distance? A. Yes. As a rule in a restaurant the kitchen is
689 on a level with the dining-room floor.

Q. Especially in cities of the first-class? A. Yes.

Q. From your experience do you consider the employment of females in hotels any more healthful than the employment of females in
690 restaurants? A. No, sir.

Q. Isn't it a fact that it is more burdensome and more difficult for women employed in hotels to perform their duties than it is for them in restaurants? A. Yes.

Q. Therefore, if there is to be any limitations on the ground of health, it should be applied to women in hotels rather than to women in restaurants?

Mr. Cunningham: I object to that.

The Court: I will sustain the objection.

691

Mr. Hill. Exception.

Mr. Hill: That is all.

Mr. Cunningham: I make a motion that the testimony given by Mr. Flynn be stricken out as incompetent and not within the issue whether Anna Schmitt was employed on the day in question.

692

The Court: I will deny the motion.

Mr. Cunningham: Exception.

Mr. Cunningham: That is all.

693

JOSEPH RADICE, defendant, called and sworn in his own behalf, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

694

Q. Are you a citizen of the United States? A. Yes, sir.

Q. You are running a restaurant at 635 Main Street? A. Yes, sir.

Q. You are the defendant in this case? A. Yes.

695

Q. Is Anna Schmitt the daughter of a citizen of the United States? A. I believe so. Her husband is a citizen.

Q. She is the wife of a citizen of the United States? A. Yes.

Mr. Hill: That is all.

The Court: D o you wish to ask anything further, counselor?

696

Mr. Cunningham: No, I think not.

The Court: Very well. We will adjourn then, at this time.

Proceedings adjourned to March 18th, 1918.

697

Proceedings March 18th, 1918. 2:00 o'clock P. M.

Trial of case resumed—same appearances.

698

WILLIAM J. STATLER, being called and sworn on behalf of the defendant, testified as follows:

699

DIRECT EXAMINATION by Mr. Hill:

Q. What is your address Mr. Statler? A. 177 Bidwell Parkway.

Q. How long have you lived in Buffalo? A. Eighteen years. Seventeen years and a half, to be exact.

Q. What is your brother's name? A.

700

Ellsworth M. Statler.

Q. What has been your business during the seventeen years you have been a resident of the city? A. Been treasurer and manager of the Statler Restaurant in Ellicott Square.

Q. Been at all interested in the hotel? A. Yes. I am a director, member of the advisory board and second vice-president of the hotel.

Q. Of the Statler Hotel? A. Yes. That was not built until 1908. I started in with the restaurant about seventeen years ago. 701

Q. Where has been your restaurant during these seventeen years? A. In Ellicott Square Building.

Q. Is that the large restaurant in Ellicott Square? A. It is the largest restaurant in the city and one of the largest in the country. 702

Q. Who have been your employees? A. We have mostly cooks and waitresses. The largest number of our employees are waitresses.

Q. Have your employees been largely female employees in your restaurant during all these seventeen years? A. Yes. We started with men waiters, but we changed during Pan-American for waitresses or girls exclusively. 703

Q. How many have you had there usually in attendance? A. We have roughly from forty to sixty waitresses.

Q. Has that been the usual number you have employed during the year? A. Yes. Of course, it depends on the business and the time of year. 704

Q. You have had charge of this restaurant during all these seventeen years? A. Yes, sir.

Q. What has been the tenure of service of waitresses in your employ during these seventeen years? A. Perhaps I could best answer that by saying that we have got a number of girls who started in with us during the Pan-American. We have still got them with us. We hardly ever lose any of our girls except through death or marriage. 705

Q. State whether or not that occupation is
706 such as to be healthful.

Mr. Cunningham: I object to that as incompetent. The witness is not qualified.

Mr. Hill: I will withdraw the question.

707 (No response from the witness).

Q. What has been the character of service so far as hours are concerned day or night? A. We don't keep open after nine o'clock except on rare occasions like banquets. Our hours are from six in the morning until nine
708 at night. We have a very few employees on for breakfast because our breakfasts are very light.

Q. You say you have had from forty to sixty female employees? A. Yes.

Q. What has been your observation so far
709 as their health is concerned under this life of restaurant service? A. Why, we have never had any,—I have never had any questions about their health. That question has never come up in fact any more than lots of thin You might hear of some one being taken sick once in awhile, but it has no bearing on our
710 place or the duties. In fact, that question has never been brought up.

Q. Why? A. We never,—there is nothing wrong, you might say.

Q. Have the girls been there right along regularly day in and day out? A. Yes.

Q. In other words, the occupation is a healthful occupation according to your judgment?

Mr. Cunningham: I object on the ground the witness is not qualified. I ask to have the question stricken out. 711

The Court: I think possibly that his being manager of the business for seventeen years that he would be competent to testify, not as an expert or a physician, as to the continuous service of his employees, their appearance, the manner in which they have discharged their duties, etc., as bearing on the question of health, which would be a matter of observation on his part. I think I will allow it on that ground. 712

Mr. Hill: Taking these thing all into consideration. 713

A. I can answer it another way. I have repeatedly asked for suggestions that would benefit the girls. I have gone around in fact and found fault myself and they have laughed at me and have said that they are all right that they didn't want anything better. I have done this with the idea of getting things perfect. I have never had anything arise— 714

Q. In other words the occupation has been so healthful that no questions arose as to its being otherwise? A. No. The best answer is that they stay. They stay with us year in and year out. 715

Q. Has it been your observation that girls come right along day in and day out for weeks without any breaks at all? A. Yes.

Q. In other words, you don't recall any instance where any women or girls engaged in your service in the restaurant during these seventeen years where there has been any

serious illness during that service? A. Not to
716 my notice. I never had it occur, no.

Q. From their appearance they all appear to be healthy who are employed in your service? A. Just as healthy as anybody else, I should say.

Q. Do they complain about not being well? A. No.

717 Q. Have you ever had any complaint? A. No.

Q. You are familiar, are you not, with the service at the Statler Hotel with female employees there? A. Not as familiar there as I am at the restaurant.

718 Q. You are familiar with it? A. Yes.

Q. You are a Director and the Treasurer? A. Yes.

Q. See the girls around the kitchen, dining-rom, etc.? A. Yes.

Q. Have you observed the steadiness of their attendance there? A. I would not come
719 in direct contact there. I would only come in contact with the big questions brought up before the Advisory Board. There has been nothing brought up before the Board directly affecting females any more than men.

Q. What is the difference between women in hotels and— A. In the culinary service we
720 have women who prepare the vegetables the same as in restaurants. We also have waitresses who wait on the officers, which is equivalent to waiting on guests in restaurants. In restaurants, of course, there are no maids.

Q. Confine it to parallel duties performed in restaurants by females. What do you say as to the comparative healthfulness of the service in the two places? A. There is no

difference. It is absolutely the same in my opinion.

721 Q. Is there any reason that occurs to you why the employment of females in hotels is any more healthful than in restaurants? A. Absolutely not.

Q. How long have you been connected with the hotel? A. Since its inception in 1908.

722 Mr. Hill: That is all.

CROSS-EXAMINATION by Mr. Cunningham:

723 Q. Your restaurant has been run exclusively between six in the morning and nine at night generally speaking? A. Excepting for banquets. We generally try to get closed as soon as possible to nine o'clock.

Q. Your testimony is as to the health of employees during daylight employment? A. No; because our lower dining-room has no daylight at all.

724 Q. During those hours, during the day time? A. Yes.

Q. None of the work took place before six in the morning or after nine at night? A. Except the scrub women. This law affected them. We had scrub women who scrub up in the restaurant after it closes at night. This law af- 725 fected them, although in Ellicott Square they had scrub women who were allowed to do their work during those hours.

Mr. Hill:

Q. During the same hours? A. Yes.

Mr. Cunningham: I object to that.

The Court: Strike it out.

Mr. Hill: Let that be my question,
726 then, so as to not have to bring it up again. Let it stand on that account and you may object to it.

Mr. Cunningham. I really don't know what you are asking.

The Court: Let Mr. Cunningham
727 continue his cross-examination.

Mr. Hill: All right.

Q. Your experience, then, in respect to waitresses has been almost confined to those who work before six o'clock in the morning and stop before nine in the evening? A. That
728 is correct.

Q. You cannot testify of your own knowledge as to the results surrounding those that work after ten o'clock at night or before six in the morning? A. No.

Mr. Cunningham: That is all.

729

RE-DIRECT EXAMINATION by Mr. Hill:

Q. You are one of the company that owns what hotels? A. The Hotel Statler, Buffalo, Cleveland, Detroit, St. Louis and the Pennsylvania Hotel now being built in New York.

730 Q. Are all of those hotels except the last one in operation? A. Yes.

Q. Have been for a longer or shorter time? A. Since 1908.

Q. Do you employ women in all those hotels? A. Women in the culinary department and waitresses. In Buffalo women who prepare vegetables and do certain other work around the kitchen.

Q. In the culinary department and the service in the dining-room that corresponds quite closely to that of restaurants? A. Yes. Service to the officers that is done by— 731

Q. That is waitresses' work? A. Yes.

Q. They are in the dining-room and in the kitchen looking after dishes and preparing their meals and all that sort of thing in hotels? A. They don't prepare. They serve them. 732

Q. Serve? A. Yes. They serve them from the kitchen to the officers, which is equivalent to service from the kitchen to the dining-room in the restaurant.

Q. How late do they work in hotels?

Mr. Cunningham: May I ask that you confine it to the Hotel Statler? 733

Mr. Hill: Yes. We will take his own hotel.

A. I am not sure of what hours they work on that.

Q. How late? A. I don't think they would be serving the officers after half-past seven or eight o'clock in the evening. 734

Q. What do they do after that? A. They are off watch. They serve three meals, breakfast, dinner and supper. Then they are off.

Q. In your Statler Hotel here in Buffalo you have male help to wait on the table? A. The waiters are male, yes. They wait on the guests, though, only. 735

Q. From your observation have you noticed anything that indicated unhealthfulness in the women who wait on tables in the hotels? A. No, sir. There is absolutely no difference. It is just as healthy for women as for men.

Q. Restaurants run frequently after ten
736 o'clock at night in Buffalo? A. Yes.

Q. What is the occasion of their being open after ten o'clock? A. It is a question of the restaurant that is running. Take a restaurant like our Ellicott Square restaurant that caters more to the best elements in the city. Lots of restaurants are run those hours
737 which cater more to the night trade, pleasure trade. We have just opened a new restaurant which caters to that trade.

Q. Where is that restaurant located? A. Corner of Main and Swan.

Q. What are your employees there? A. We
738 have counter girls there that wait on the trade.

Q. Until what time? A. Ten o'clock.

Q. Why don't they work after that? A. Because of this unjust law, I call it.

Q. Would they like to work after that time? A. Yes. We have to put on men and boys after that and the girls have to quit their
739 job. We rather have girls.

Q. Isn't it a fact from your observation that there are girls in other branches of business working after ten o'clock here in Buffalo? A. I am not much of an authority on that.

Q. From your own experience is there anything that you have observed about the
740 service in restaurants for females either in the kitchen or in the dining-room that has led you to believe or observe anything unhealthy about the occupation? A. No, there is nothing unhealthy that I have noticed.

Q. In all your experience you have never noticed anything about the service or employment of women in restaurants, whether they are in the dining-room or kitchen, that is unhealthy? A. Nothing.

Q. You have never had any complaint among your employees of from forty to sixty during the time you have been running? A. No. The only complaints we have had is the inability of waitresses to get their food quick enough, which has nothing to do with this case. That is the ordinary complaint of restaurant girls. 741

Mr. Hill: That is all. 742

RE-CROSS EXAMINATION by Mr. Cunningham:

Q. You don't mean to testify seriously, do you, that in all these seventeen years during which you have had from forty to sixty girls working for you, that none of them have become sick in your employment? A. No, I don't mean to testify that way. 743

Q. As a matter of fact, you don't know how many have been taken sick, do you? A. Why, I have heard of a few cases, yes, where they have become sick. 744

Q. It would not come to your attention as a general rule, would it? A. Yes, it would. Frequently it does come to my attention. It is so rare that it does come to my attention.

Q. As a matter of fact, isn't there the average amount of sickness among your help? A. Yes, I presume there is the average amount. 745

Q. Just about as there has been the average amount of health among them? A. Yes, as far as I know. In making a comparison between the male and the females, I cannot see any difference between them. They are the same in Buffalo restaurants and hotels.

Q. Have you ever observed what the weight of a tray of dishes is? A. Yes.

Q. Sometimes it is pretty heavy? A. I
746 will answer it this way.

Q. Supposing you answer it my way? A. I could not answer yes or no to that very well. What one man might consider heavy, another man would not.

Q. All right. Answer it your way then. A. What I was going to say is along the line
747 I have spoken of before. We have aluminum trays that we use. I have taken up the question of weights with the girls and placed as much stress as we could on it. They say that it is all right, we don't have any trouble. We have bus boys that they call on if they need any assistance. Any extra heavy tray is car-
748 ried in by a bus boy and the trays of dishes are carried out by bus boys. Those are all the time working. If there is any exceptionally heavy tray, the bus boy carries it in.

Q. As a general rule a waitress carries a tray full of dishes from the kitchen to her par-
749 ticular patron? A. Very seldom. Very seldom a tray is entirely filled.

Q. She carries the tray on her arm or her hand? A. It is optional; whichever way they prefer.

Q. How far is it from the kitchen to the dining-room tables? A. We have two dining-
750 rooms.

Q. What is the average distance? A. In our upper dining-room I should say approximately fifty or sixty feet.

Q. That is a round trip of one hundred to one hundred and twenty feet? A. Yes.

Q. These girls are kept on duty how long at a stretch? A. They come on at eleven-thirty and get off at two-thirty. They only

wait on twelve or fifteen people at this time of the year. They wait on more in the summer, of course. 751

Q. Waitresses only serve twelve or fifteen people in your restaurant in three hours? A. At a meal.

Q. You don't mean they work three hours a day in your restaurant? A. At a meal.

Q. When do they come on for the night meal? A. They come on at five-thirty and work until about seven-forty-five. 752

Q. About as busy then as at your other meal? A. Yes.

Q. What time do they come on in the morning? A. They are on duty at six-thirty.

Q. They get off— A. They work until after lunch. 753

Q. They begin at six-thirty and work until twelve-thirty? A. They work from six-thirty to two-thirty.

Q. Then is there another shift that comes on at eleven-thirty? A. Yes. Breakfast is very, very light. There are only about four girls on at breakfast time. 754

Q. Now you have male help entirely as far as waiters are concerned in the Hotel Statler? A. Yes.

Q. Have you had any difficulty in getting male help in your restaurant since the war broke out? A. I don't believe I can answer that so it will be of value to you, because I don't come in contact with those problems, not unless it becomes serious. 755

Q. If you had a shortage of waiters over in your restaurant you would surely hear of it? A. If it got serious, but they usually manage that the way they do all these things, as the

management doesn't care to be burdened with
756 those things unless they have to be. That is what they have the head waiter for. If it is going to be serious and continue for any length of time, it would naturally come up. We have had our troubles along those lines.

Q. You have had your attention called to the shortage of waiters since the war broke
757 out? A. Yes. We have had complaints of that, but unless I analyzed and got right down to rock bottom I could not tell the value of it.

Q. How long have you been running the lunch room over here? A. Since the last of August.

758 Q. During the day girls give counter service? A. Yes.

Q. From ten o'clock on that service is supplied by men? A. Yes.

Q. Have you had any difficulty in getting men to supply that service? A. Yes. It is very bad.

759 Q. You have succeeded, however, have you not in getting such service? A. No. It is not satisfactory at all.

Q. In what respect? A. You can't get them, and the ones we get are not at all satisfactory. It is absolutely interfering with the business.

760 Q. In what respect are they not satisfactory? A. The quality of them. They know that there is a shortage of them and they are totally indifferent. What we do get are a very poor class. They do as they please. And they are hard to get as it is.

Q. Which do you pay more, the female or the male help? A. We pay them the same.

Q. Did you every try offering a little more

for male help that you have to get after ten o'clock at night to run the restaurant? A. Yes. Not in that particular case, but I can mention another case. 761

Q. No. Take this one. A. I have instructed my people to pay whatever is necessary to get results. Their answer is that it is just the same.

Q. How much do you pay the people? A. Ten dollars a week and their meals. 762

Q. In the lunch room? A. Yes.

Q. You pay the girls that, too? A. Yes.

Q. Ever pay fifteen dollars for such service, or authorize your manager to? A. I have authorized my managers to. Their answer is just what I have stated. They don't think it would accomplish any more. 763

Q. You have never paid that? A. No.

Q. Have you served fewer lunches over at your lunch room since the law took effect than you did before it took effect? A. I should say yes. It is not possible to have a person come into your place and get such service and expect them to come back. They can't get satisfactory service, not from the boys. 764

Q. You have not suffered anything in the Hotel Statler from lack of employees in the last few months? A. As I said before, I don't keep as close touch with the hotel. I have troubles enough of my own and I don't care to be bothered with them. 765

Q. What I am getting at is if you gave unsatisfactory service at the Hotel Statler it would be reflected in the amount of patronage the hotel had? A. No. In theory you think so, but it is very hard.

Q. Isn't that what you just said in reference to the lunch room? A. Yes. Because

the lunch room is new. It only started in Au-
766 gust. I am handling it like a baby. I watch it like a hawk. I carry statistics and am watching it right along. The hotel is established while this is an entirely new matter.

Mr. Cunningham: That is all.

767 RE-DIRECT EXAMINATION by Mr. Hill:

Q. In addition to the ten dollars a week the girls get tips there? A. Yes.

Q. That amounts to a considerable sum? A. I understand that it amounts to quite a little. They also get their meals, which is
768 quite a factor under the high cost of food today.

Q. In addition to their weekly wage they also have their tips? A. Yes.

Q. Now, it is a fact, isn't it, that females will perform in restaurants in any line, year in and year out, more satisfactory service than
769 boys or men? A. No question about it in my mind.

Q. That is practically in their line of duty? A. Yes. They naturally take to that line of work.

Q. In your own line you find that the service is more satisfactory where rendered by
770 females than by men? A. Yes.

Q. Isn't it a fact that employees in hotels are foreigners or young men just coming into the country and who want to get a foothold? A. Yes.

Q. Isn't that a fact in your hotels? A. Yes. There are a large number of Greeks. They

take them on as bus boys and gradually work them in as waiters.

771 Q. Isn't it a fact that very few American boys are employed in that service? A. Yes. You can't get American boys to take it up.

Q. Isn't that true of all your hotels? A. Yes.

772 Q. Who else have you in your hotels besides Greeks? Have you Italians? A. They are mostly Greeks.

Q. These young Greeks are from Greece very largely? A. Yes.

Q. In some hotels it is Italian service? A. Yes.

773 Q. In some it has been German? A. Yes. Swiss, Germans, and all of those.

Q. Isn't it a fact that in a majority of the hotels you won't find a single American boy acting as waiter? A. The only time I ever recall—

Q. Isn't that the fact? A. Yes.

774 Q. Go on. A. The only time I recall of their acting as waiters is during vacation time when some of the college boys fill in.

Q. In some cases where the colleges or schools close and the boys take advantage of this service as a means of livelihood and to aid them in their course? A. That is true absolutely.

775 Q. Is it advantageous to your business as restaurantkeeper to have your employees changing all the time from time to time? A. No.

Q. As you say you are changing in your Main Street restaurant? A. No. It is absolutely bad. We try hard to avoid that. If they show the slightest inclination to stay

with us we try hard to keep them. On the
776 other hand, if they show by their manner that they only hope to be with us a short time and only for the wages they are paid and don't care whether they have a position or not, there is not any object in doing anything for those. That is the class of employees we get to-day.

Q. Now when this law took effect and since
777 it took effect in October prohibiting the employment of females after ten o'clock at night or before six in the morning, what was said about it by waitresses in hotels and restaurants in the city of Buffalo?

Mr. Cunningham: I object to that as
778 incompetent and not within the issue.

The Court: I will sustain the objection.

Mr. Hill: Exception.

(No response from the witness in re-
779 ply to the last question asked.)

Q. Isn't it a fact there has been a wide protest made and is also being made now against the enforcement of this law, because it interferes with the rights of labor as to the employment of females in occupations in which
780 they had been engaged for years?

Mr. Cunningham: I object to that.

The Court: I will sustain the objection.

Mr. Hill: Exception.

(No response from the witnes in reply to the last question asked.)

Mr. Hill: That is all.

RE-CROSS EXAMINATION by Mr. Cunningham:

781 Q. The most attractive feature for a waitress is the tips she gets? A. Why, I presume so.

Q. You don't pay waitresses in the restaurant over here very high wages, do you? A. I believe I can best answer that by saying 782 that—

Q. Supposing you just answer the question? A. That is another relative question. I can't answer that.

Q. How much do you pay the waitresses over there in the restaurant? A. We pay them thirty-three and a third cents a meal and forty 783 cents a meal, a dollar twenty or a dollar forty, depending how long they work.

Q. Some get a dollar twenty and some a dollar forty? A. Yes.

Q. Some have been with you for seventeen years? A. Yes.

Q. Have you any idea how much they have 784 increased that stipend by their tips? A. That is very hard to get accurate information about. They are loath to tell it. I should say they make anywhere from two to four dollars a meal, depending on the time of year. I offered some of them a position to go over to the 785 lunch room at ten dollars a week at better hours, but they refused to do so. That answers your question in a way.

Q. They make good money but they don't get it from the proprietor? A. They get it from the proprietor, because if they didn't get tips from the guests the proprietor would have to pay more and the proprietor would immediately tax on ten cents more for a meal.

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

786 Q. Isn't it a fact that any such restrictive measure as this has a tendency to embarrass restaurant keepers and enhance the cost of living? A. Absolutely.

Q. In other words the state is putting additional burdens on you? A. Yes, sir, absolutely.

787 Mr. Cunningham: I object to that.

The Court: I will sustain the objection.

Mr. Hill: Exception.

Q. Do you know anything about the num-
788 ber of people you feed in your restaurant on Main Street? A. Around a thousand people a day.

Q. How many do you serve in the basement in Ellicott Square? A. In the basement alone?

789 Q. In your Ellicott Square restaurant? A. About the same number at this time of year. In the summer it is double that.

Q. That has been your experience during the past few years to serve two thousand during the summer time? A. Yes, it is easily two thousand. Between the lunch room and
790 the restaurant we will easily handle over four thousand people a day in the summer time in the busy season. Right now between the two places we are running around two thousand people a day.

Q. If this law is retained and the shortage of male help continues to increase, what do you say as to the probability of there being serious difficulty in providing service for the

increased trade you will have during the summer months?

791

Mr. Cunningham: That is objected to as calling for a conclusion, and is a matter of speculation.

The Court: I believe that it is, Senator Hill.

792

A. I can state one thing irrespective of that question.

The Court: Let me ask a question first.

The Court: The Statler Restaurant proper, that closes at nine o'clock? A. Yes, sir.

793

Q. Law or no law? A. Yes.

Q. The only restaurant you have that keeps open after ten o'clock is the new lunch room? A. The only restaurant, yes. That keeps open until two in the morning.

794

The Court: Your question had reference to the restaurant alone?

Mr. Hill: Yes. The hotel is not affected.

Mr. Hill: (Resuming)

795

Q. I will ask this question. Isn't it a fact that your business is larger in summer months than it is in winter months? A. Yes.

The Court: Q. How does the business after ten o'clock at night compare with business during the day? A. It varies quite a little. Some nights it is

very heavy. I can answer something
796 which will have a bearing. My night manager has notified me that he does not see how we can run the business this summer at night time with boys, that he doesn't think he can get them.

Q. That answers Mr. Hill's question. I want to find out how your service
797 compares between the day and the night. A. It varies quite a little.

The Court: In other words, it is important for us to know what your service is.

798 Mr. Hill: (Resuming)

Q. If you have two thousand during the day, how many will you feed of that amount after ten o'clock at night during the summer time? A. I can only figure on that.

Q. What is your best judgment?

(No response from the witness.)

799 The Court:

Q. That is a mere mater of speculation? A. Yes, it is speculative.

Q. You have had no experience with summer trade after ten o'clock at night? A. Yes. We started last August. We are sure that
800 this lunch room is going to do an enormous amount of business this summer.

Q. You did a large business last summer? A. Yes.

Q. After ten o'clock at night? A. Well, that is—

Mr. Hill: (Resuming)

Q. Well, how many did you serve? A. After ten o'clock at night I believe the books

will show that we served two or three hundred people.

Q. From two to three hundred people right along after ten o'clock. A. Yes. 801

Q. The service has been increasing monthly as the months come along? A. Yes.

Q. So you would expect a larger number of patrons this summer than you had last summer? A. Yes. 802

The Court: I think I will take that and give you an exception, Mr. Cunningham.

Q. Now go on and state about the difficulty in getting help if this law is enforced? A. As I say, the Manager has notified me that he 803 does not see how we can run the business this summer the conditions are such. The night Manager over there comes on at four o'clock. Up to ten o'clock he has girls. At ten in come the boys and they are so indifferent as to the class of work they do. He says he does not 804 see how we can run the business this summer with that class of help.

Q. It is on account of not being able to employ women? A. Women help is much more satisfactory.

Q. That is it? A. Yes, that is it.

Mr. Hill: That is all. 805

Mr. Cunningham: That is all.

MARGARET HOOK, being called and
806 sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. Where do you live? A. 192 Edward Street, Buffalo.

807 Q. What has been your business for the last four or five years? A. Waitress.

Q. Where? A. New York Central depot, Albany. Duffy's, Albany.

Q. How long did you work there? A. Two years and then two years in the Central.

Q. After working in these places where
808 did you work? A. I did not work anywhere until I started working for Mr. Flynn.

Q. What was your time of service in Albany? A. Nights. From seven at night until seven in the morning.

Q. Have charge of a restaurant? A. I had charge of the counter.

809 Q. How long were you in that service? A. About two years.

Q. Thereafter where were you employed? A. At Duffy's in Albany.

Q. Where is his place? A. On the corner. It is on Pearl Street. I don't know the name
810 of the other street.

Q. Near the Kenmore hotel? A. Right on the other corner.

Q. Near the Y. M. C. A.? A. No; I cannot say that it is.

Q. It is right across from the Kenmore? A. Yes.

Q. How long were you in that restaurant? A. A little over two years.

Q. What were your hours there? A. From seven at night until seven in the morning. 811

Q. All night service? A. Yes.

Q. Where have you worked since coming from Albany? A. I worked for McCloud about a year.

Q. Here in Buffalo? A. Yes.

Q. What were your hours there? A. From six at night to six in the morning. 812

Q. What was your service at Duffy's? A. Waitress.

Q. And at McCloud's. A. Waitress.

Q. Where have you worked lately? A. Flynn's was the first place I have worked since.

Q. Since this law went into effect there has been no service in Mr. Flynn's place after ten o'clock at night? A. No. 813

Q. I find from your testimony, that you have been in the restaurant service five years? A. Yes.

Q. How long have you been in the service of Mr. Flynn? A. I think it was in October that I came there, this year. 814

Q. What are your hours there? A. From seven in the morning until two-thirty in the afternoon.

Q. As a waitress? A. Yes.

Q. Which of the two services do you like best? A. I think I like night service best. 815

Q. Why? A. It is easy and there is more money in it.

Q. How about your health? A. I cannot see that it makes any difference.

Q. You will have to answer definitely. What do you mean by that? A. I feel that I am just as well for night service as I am for day service.

Q. During the five years of such employ-
816 ment did you have your usual good health? A. I did.

Q. You enjoy good health, do you? A. I do.

Q. Was the service a healthful service so far as you are concerned? A. It was.

Q. During that time did you have any seri-
817 ous illness? A. No, sir.

Q. Due to your service? A. No, sir.

Q. Are there advantages in night service over day service that applies to waitresses? A. Except as I have stated. The service is easier and there is more money in it.

818 Q. Did you find that your employment at night interfered with your health? A. No.

Q. You took your rest during the day time? A. Yes.

Q. During all these years were you ill at all? A. Never.

Q. If this law were not in effect would you
819 still prefer to work nights? A. Yes.

Q. You say that the work at night is not as heavy as it is during the day? A. Yes. And the tips are larger.

Mr. Hill: That is all.

820 CROSS-EXAMINATION by Mr. Cunningham:

Q. Do you sleep as well in the day time as you do nights? A. I do.

Q. Did you when you first started in to work nights? A. Yes.

Q. What time did you usually get to bed after you got through with your work? A. About half-past eight or nine o'clock.

Q. Went directly home from the restaurant? A. Yes.

Q. Do you live alone? A. I do not. 821

Q. Did you then? A. No.

Q. Whom do you live with? A. My husband.

Q. Do you do your own housework? A. No.

Q. Who did it? A. I only lived in the 822
front room.

Q. Did that mantain throughout the five years? A. Yes.

Q. Tht same condition maintains now? A. Just about, yes.

Q. You still live in a front room? A. No. I have a flat, but I have a woman to do my 823
work.

Q. Do you help in it at all? A. Very little.

Q. You return home about what time from the restaurant? A. About three o'clock.

Q. You don't help in the housework? A. 824
Only to get the meals.

Q. Do you get your husband's breakfast? A. No, I do not.

Q. So you would prefer working nights just because you get more money? A. It is easier work for us.

Q. What do you mean? It is the same 825
kind of work? A. Yes.

Q. Is there less work? A. I don't know as there is less, but the orders are smaller.

Q. The tax upon you is less at night? A. Yes, I think so.

Q. Did you find the tax was considerable upon your mind in keeping separate the different orders? A. No.

Q. What do you mean by easy? The work
826 is less because the tax upon you is less? A. The orders you get at night would naturally be less than the orders you get in the day time.

Q. That is what you mean when you say it is easier work? A. Yes.

Q. How would you make more money for
827 night service than you would for day service? A. I think theater-going people are apt to scale more than day people.

Q. You would get larger tips from theater-going people? Would you get any more than your regular salary for working nights? A. The wages would be the same.
828

Mr. Cunningham: That is all.

Mr. Hill: That is all.

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829 HATTIE CHAMBERS, being called and sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. What is your address? A. 922 1-2 Main Street.

830 Q. What has been your business for the last few years? A. Waitress.

Q. Where? A. I worked in Chicago, for Mr. McCloud and in the New York Central Station, Buffalo.

Q. How long did you work for him? A. About five years.

Q. For Mr. McCloud on Exchange Street? A. Yes.

Q. Were your services in Chicago befor you came here? A. Yes. 831

Q. That was about eight years ago? A. Yes.

Q. You have worked in Buffalo for six years? A. Yes.

Q. Five of them have been for Mr. McCloud? A. Seven years in Buffalo. Between four and five for Mr. McCloud and the rest of 832 the time in the New York Central station.

Q. Was your service day or night? A. Two years in Chicago nights, a year and a half nights at McCloud's and the rest days.

Q. Your service was that of a waitress? A. Yes.

Q. What is McCloud's place, a hotel and 833 restaurant together? A. Yes.

Q. What were your hours in Buffalo and in Chicago? A. In Chicago from seven-thirty at night until seven in the morning. At McCloud's from seven at night until seven in the morning.

834

Q. What were your day hours at McCloud's and in the Central station? A. At McCloud's from seven to seven at night. Then I get three hours off in the afternoon. At the Central it was from six in the morning and then I got off about one-thirty in the afternoon until about six in the evening. Then I 835 worked until about eight or eight-thirty.

Q. What do you say as to your health during your occupation as a waitress nights in the hotel or restaurant?

Mr. Cunningham: I object. The witness is not qualified.

The Court: Objection overruled.

Mr. Cunningham: Exception.

A. Not a bit difference.

836 Q. You were as well when you worked nights as when you worked days? A. Just as well.

Q. Which of the two services do you prefer? A. Lots of ways I prefer nights.

Q. Why? A. You have all day to yourself. In the summer I prefer to work nights

837 because it is so warm.

Q. When did you get your rest? A. Days. I slept in the morning and sometimes all day, depending on where I wanted to go.

Q. You were not deprived of your rest because you worked nights? A. No, not a bit.

838 Q. During your night services were you subject to sick spells? A. No, sir.

Q. Is the service in a restaurant as easy and as healthful as it is in a hotel? A. Easier at night.

Q. In other words, restaurant service for females is as agreeable to health as any hotel

839 service? A. Yes, sir, I think so.

Q. At night? A. Yes, sir, I think so.

Q. During all these years that you have been employed, have you noticed any difference so far as healthfulness is concerned between your work at night and your work during the day? A. Night work is easier.

840 Q. Would you as soon engage in night work as you would in day work? A. Yes, sir, always. In summer I prefer night work.

Mr. Hill: That is all.

CROSS-EXAMINATION by Mr. Cunningham:

Q. How tall are you, about five feet seven? A. Yes.

Q. How much do you weigh? A. One hundred and sixty.

841 Q. That has been your average weight for the last six or seven years? A. Yes, sir.

Q. You rather work at night because you get more money? A. Not more money. It is easier. You don't have to wait on so many people.

842 Q. Less physical effort? A. Perhaps.

Q. What time did you usually get through when you were working nights? A. At McCloud's you go on at seven and quit at seven in the morning.

Q. A twelve hour stretch? A. Yes.

Q. Did you go home then and go to bed? A. Yes, sir.

843 Q. Always? A. Not every day.

Q. On the average what time did you go to bed? A. About eight or half-past eight.

Q. And sleep until when? A. Three or four in the afternoon.

844 Q. A good many days you would not go to bed until three or four in the afternoon? A. I always went to bed before three or four in the afternoon.

Q. What did you mean when you answered counsel's question that it gave you the days to yourself? A. In the summer.

845 Q. What did you mean? A. It is too warm to work. I prefer to work nights in the summer.

Q. Where do you work now? A. I am not working now.

Q. Where did you work last? A. In the New York Central station.

Q. Day or night work? A. Days.

Q. Did you ever work nights at the Cen-
846 tral station? A. I always worked days there at the Central. The restaurant is not open nights, except the counter.

Q. You say you rather work nights because you get more tips? A. I was paid more for working nights.

Q. Where? A. At McCloud's.

847 Q. Does Mr. McCloud pay larger wages for working nights than he does for day work? A. He did me.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

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MARGARET HOOK, recalled for further cross-examination, testified as follows:

CROSS-EXAMINATION by Mr. Cunning-
849 ham:

Q. How tall are you, about five feet six? A. Yes.

Q. How much do you weigh? A. About one hundred and seventy.

Q. That has been your normal weight for
850 the past five years? A. I don't think so.

Q. Has it been greater than that? A. Yes.

Q. You weigh the least now that you have at any time during the last five years? A. Yes.

Mr. Cunningham: That is all.

Mr. Hill: That is all.

MAY GRIFFITH, being called and sworn on behalf of the defendant, testified as follows: 851

DIRECT EXAMINATION by Mr. Hill:

Q. Where do you live? A. 48 Charles Street.

Q. What is your business? A. I am employed by Mr. Eddy. I have worked for him 852
nights at 291 Washington Street.

Q. Is that the place he sold or closed up? A. He closed it up nights.

Q. How long did you work for Mr. Eddy in his Washington Street place before the first of October last year? A. Only a few months. 853

Q. Did you work in the place before that? A. Never.

Q. What was your work there? A. Waitress.

Q. What were your hours? A. From seven at night until seven in the morning. I started the first of September, 1917. 854

Q. During that time were you well? A. Quite well, yes, sir.

Q. Did you experience any fatigue or weariness by reason of your services? A. Not any.

Q. Were you sick any of the time? A. Not at all. 855

Q. Did you work in the factory before you worked for Mr. Eddy? A. Yes. I worked in the factory on the Terrace putting up fiber chairs.

Q. How long did you work there? A. I cannot tell you the exact date.

Q. You were so engaged on account of the death of your husband? A. Yes, sir.

Q. You went to work on account of his
856 death and you first found employment in a factory? A. Yes, sir.

Q. Then you later found employment with Mr. Eddy? A. Yes. I found the work too heavy in the factory.

Q. Was that day or night work? A. Day work.

857 Q. Were you more able to perform your night work with Mr. Eddy than you were your day work in the factory? A. I certainly was

Q. Which of the two occupations in your judgment is the less tiresome? A. Restaurant work is less tiresome.

858 Q. Since the closing of Mr. Eddy's place on Washington Street nights what have you been doing? A. I have been opening up Mr. Eddy's business at six in the morning. I have been cashier and have helped out as a waitress as well.

Q. You are still working for him in his
859 restaurant? A. Yes, sir.

Q. From six in the morning until— A. From six until two.

Q. You have had three experiences, day work in the factory, night work in the restaurant and day work in the restaurant? A. Yes.

860 Q. Tell the Court which of these three kinds of work you consider the less injurious to health? A. Why, I just as leave work at night. I don't find any difference in the health. You have less work, of course, at night, and more pay.

Q. In other words, you don't find night work any more injurious than day work? A. No, sir.

Q. You find night and day work in the restaurant more preferable than day work in the factory? A. Yes. 861

Q. What did you do in the factory? A. Rubbing up chair seats and leveling them.

Q. What factory? A. Bison Fiber Company.

Q. You were there almost a year? A. Yes. 862

Q. Was the work in the factory more tiresome than it is in the restaurant? A. Yes. It is much heavier.

Q. More so than handling dishes and trays? A. Yes.

Q. Or any other work that you were called upon to do in the restaurant? A. Yes. 863

Q. In other words, factory work was more tiresome and onerous than anything that you were called upon to do in the restaurant? A. Yes.

Q. Day or night? A. Yes. That was the reason I left the factory.

Q. Because you wanted to get an easier job? A. Yes. That was the only reason. 864

Q. You are still working for Mr. Eddy in his Washington Street restaurant? A. Yes.

Mr. Hill: That is all.

CROSS-EXAMINATION by Mr. Cunningham: 865

Q. You are a widow? Yes.

Q. Any children? A. Yes. I have three living. I lost one just before I went to Mr. Eddy's place.

Q. Are they living at home with you? A. Yes, sir.

Q. Do you do part of your own housework?
866 A. When I come home in the afternoon I get supper. I live with my sister and her husband, and she does the housework.

Q. Did you live with your sister and her husband when you did night work at Eddy's? A. Yes.

Q. When did you sleep then? A. Day-
867 times.

Q. You used to get up at what time? A. About four o'clock.

Q. Did you help your sister with the housework then? A. No.

Q. How much do you weigh? A. I don't know. About one hundred, I guess.
868

Q. How much did you weigh before you began doing night work for Mr. Eddy? A. I can't tell you that. I don't think I reduced any.

Q. Do you know whether you weighed more or less? A. I don't think I weighed any
869 more.

Q. You are unable to say? A. Unable to say.

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill:

870 Q. You are as well now as you were before you engaged in any of these occupations?. A. Yes, just as well.

Q. Just as well as you were when your husband was living? A. Better. I don't worry as much. It takes things off my mind.

Q. During his sickness you were worrying about him? A. Yes.

Q. You are better now than you have been in the past twenty years? A. I am healthier now. 871

Q. You work every day? A. Since I started out to work.

Q. You have worked every day since you have been engaged with Mr. Eddy? A. Yes; except I have one day off during the week.

Q. You have had no interruption at all in your services? A. No. 872

Mr. Hill: That is all.

RE-CROSS EXAMINATION by Mr. Cunningham:

Q. Did you make more money when you worked for Mr. Eddy nights than you do now? A. I have a different position now. 873

Q. I asked you if you made more money when you worked for him nights than you do now? A. No; I didn't earn any more at night than I do now.

Q. You earn more now? A. Yes; because I manage the business now for Mr. Eddy. 874

Q. You get a higher salary now? A. Yes.

Q. You say the work is not any more difficult during the day than it is at night? A. It is much easier at night.

Q. If this law had not gone into effect you would still be there nights? A. Yes. 875

Mr. Cunningham: That is all.

Mr. Hill: That is all.

LILLIAN ANDERSON, being called and
876 sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

Q. What is your address? A. 247 Georgia Street.

877 Q. What has been your employment during the last few years? A. I worked eight years in a factory at Wellsboro, Pennsylvania.

Q. What was the nature of your work there? A. We made the Pet brand of milk.

Q. When did you come to Buffalo? A. Two years ago.

878 Q. What have you been doing since you came here? A. I did housework for a few months and then I went to work for Mr. Eddy.

Q. When did you commence work for him? A. January a year ago.

Q. 1917? A. Yes. I left there last August.

879 Q. Where were you working for Mr. Eddy? A. 291 Washington Street.

Q. What were your hours there? A. From seven at night until seven in the morning.

Q. Your service was entirely night service? A. Yes.

880 Q. It lasted about eight months? A. Yes, sir.

Q. Before that you worked in a factory in Pennsylvania? A. Yes.

Q. Was your service in the factory day or night service? A. Day service.

Q. Have you worked nights in a restaurant since September? A. No. I am working days now for Mr. Eddy.

Q. Where? A. 291 Washington Street.

Q. How long have you been working days for him? A. I came back it was right before Christmas some time. 881

Q. Sometime in December you resumed work with Mr. Eddy? A. Yes.

Q. Have been working with him since that time in day service? A. Yes.

Q. During your employment in night service for eight months state the condition of your health. A. My health was all right. I was perfectly well all the time. 882

Q. Was there anything in the service that was fatiguing? A. No, sir.

Q. Or tiresome to you? A. No, sir.

Q. What was your work nights during that time? A. Waitress. 883

Q. What did they require you to do? A. Serve customers; serve meals.

Q. How did that compare in your opinion as to healthfulness with your service in the factory? Which was more tiresome? A. The factory. 884

Q. The service in the factory was more tiresome than your service in the restaurant nights? A. Yes.

Q. How does the service in restaurants nights compare with service in the restaurant during the day time, in your opinion? A. Well, I like that work as waitress. 885

Q. Coming down to the question of difference between the day and night service in the restaurant. Is there anything about night service that is more unhealthy? A. No, sir.

Q. Which would you prefer to do if you had your choice? A. I would do either.

Q. You have no preference? A. No. I like night work just as well as I do day work.

Q. Were you as well during night service
886 as you were during day service during all these months? A. Yes, sir.

Mr. Hill: That is all.

CROSS-EXAMINATION by Mr. Cunningham:

887 Q. How long did you work for Mr. Eddy? A. I worked for Mr. Eddy from January, 1917 to the first of September or the last days of August.

Q. That was nights? A. Yes. From seven at night until seven in the morning.

Q. On the taking effect of this law he
888 changed you over to day work? A. I left there last Fall. My home is in Pennsylvania. I had not been home for two years. I went home for a couple of months and then when I came back I went to work for Mr. Eddy. That law had gone into effect in October.

889 Q. You left Mr. Eddy a month or so before the law took effect? A. Yes.

Q. When you came back you went and got another positon with him days? A. Yes.

Q. Did you earn any more money days than you did nights? A. I made more nights than I do days.

890 Q. Did you get a higher salary or did you get more tips? A. I got both.

Q. Mr. Eddy paid you more for working nights? A. Yes.

Q. You also got more tips? A. Yes.

Q. What was the nature of the work you did in the factory? A. We made tin cans and we took care of the milk too. That tin was heavy to handle.

Q. Did you have any lifting of the milk? A. Not the milk. It was the tin more than that. Cases that the cans fit in, those were heavy. 891

Q. You worked nighttime there, of course? A. Yes, sir.

Q. The hours being what as a general rule? A. From seven to six, but we had an hour for noon. 892

Q. Ten hours a day? A. Yes.

Q. Did you earn more or less in the factory? A. I made less. We had our board to pay then. We get our board at Mr. Eddy's.

Q. How tall are you? A. You will have to see for yourself. 893

Q. I want it on the record so when the Court of Appeals reads the record they will have some idea. Are you about five feet nine? A. I don't know.

Q. How much do you weigh? A. One hundred and forty-three the last time I was weighed. 894

Q. That has been your normal weight for the last few years? A. Yes, sir.

Mr. Cunningham: That is all.

RE-DIRECT EXAMINATION by Mr. Hill: 895

Q. You say the service in the factory was more tiresome? A. Yes, sir.

Q. Than it is in the restaurant? A. Yes, sir.

Q. Is that the reason you came to be employed in a restaurant? A. Yes, sir.

Q. Although the service you were doing in the factory was not what you would really call

heavy work for employees? A. Yes. We
896 had a good deal of lifting to do there.

Q. From your knowledge of factories you would rather work in a restaurant than in a factory? A. Yes.

Q. Of any kind? A. Yes.

Mr. Hill: That is all.

897 Mr. Cunningham: That is all.

LILLIAN ANDERSON, recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Hill:

898

Q. If there were no legal objections, what would you like to do as to your work? A. I would work either nights or days. It makes no difference.

Q. You are perfectly willing to work nights? A. Yes, sir.

899 Q. You think that is quite true of ladies who are employed in restaurants?

Mr. Cunningham: I object to that.

The Court: No. I will exclude that.

Mr. Hill: So far as she knows.

900 The Court: No. I will sustain the objection.

Mr. Hill: Exception.

Mr. Hill: That is all.

Mr. Cunningham: That is all.

Mr. Hill: That is the defendant's case, Your Honor.

Defendant rests.

ROSALIE BELL, being called and sworn on behalf of the People in rebuttal, testified as follows: 901

DIRECT EXAMINATION by Mr. Cunningham:

Q. Doctor, what is your address? A. 125 West 16th Street, New York City.

Q. What is your business? A. Medical Inspector, State Department of Labor. 902

Q. Are you a practicing physician? A. Not at present.

Q. Have you been such? A. Yes.

Q. Where did you obtain your medical education? A. Woman's College, New York. Infirmary. 903

Q. How long a course did you take there? A. Four years.

Q. Did you get your diploma? A. Yes.

Q. Your degree? A. Yes.

Q. Have you had any hospital experience? A. Dispensary work, yes, sir. 904

Q. How long since you have been admitted to practice? A. I took my degree a little over twenty years ago. I have been in practice about seventeen years.

Q. Have you been practicing continuously yourself until the last three years? A. Until I took this position. 905

Q. You had practiced medicine yourself for seventeen years after you were admitted? A. Yes.

Q. Then accepted a position with the State Labor Department? A. Yes.

Q. Have you in the course of your experience as a physician had occasion to investi-

gate the subject of employment of women at
906 night. A. Not as an investigation, sir.

Q. Have you had such matters come under your observation? A. Yes, sir.

Q. Have you had patients come under your observation who were employed nights? A. Yes, sir.

Q. What is your general opinion, based
907 upon your education as a physician and experience as a physician, on the subject of employment of women at night?

Mr. Hill: We object on the ground she is not qualified.

The Court: Objection overruled.

908

Mr. Hill: Exception.

A. My opinion is that employment of women during the night is not as healthful as that during the day on account of wasted sleep.

909 Q. Will you explain the reason for your conclusion? A. Because I have had a number of acquaintances who are night workers. They have come in and informed me that—

Mr. Hill: We object.

Q. State what you found from your obser-
910 vation. A. I observed that they were nervous.

Q. Do you know from what that condition arose? A. Because they did not have sufficient sleep.

Q. Now, speaking as a physician, what is the normal time for sleep, night or day time? A. Usually between ten p. m. and six a. m.

Q. Do you know from your own observation whether people sleep more soundly during those hours than they do during daylight hours? 911

Mr. Hill: We object to that.

The Court: I will let her speak if she can tell from her experience.

Mr. Hill: Exception. 912

A. I can speak from my own personal experience.

The Court:

Q. From your knowledge as a physician? A. Yes, sir.

Mr. Cunningham: (Resuming) 913

Q. Speak from what you have learned from your observation as a physician in dealing with your patients. A. I have observed,—of course, you understand, Your Honor, I cannot see everybody in bed sleeping. That would be impossible for anybody to do. 914

Q. I am speaking from your general experience. What is your answer? A. Sleep that is obtained during the day, as far as I have been able to judge, is broken and not as refreshing as sleep obtained during the night hours.

Q. Have you had occasion during your work for the Department to investigate the subject of night employment for the other sex? A. Yes, sir, a little. 915

Q. What have you found in your observation? A. Within the month I have interviewed a number of women workers in New York and they have told me—

Mr. Hill: We object.

916 The Court: No. What you observed yourself.

Mr. Hill: You can't tell what they told you.

Q. What have you observed as to their
917 physical condition? A. I have observed several that appear nervous and restless.

Q. Do you konw from what this condition arose? A. I know what they told me; that they were engaged in night work; that they were off duty about six a. m. and when they returned home they did not go to bed but
918 stayed up and got their children's breakfast and prepared them for school. Apparently they got very little sleep.

Q. Have you in the course of your work as a physician have trained nurses fall under your observation at all? A. Yes, sir.

Q. Women who are engaged in night serv-
919 ice? A. Yes, sir.

Q. What did you observe as to them when they were on duty nights? A. In one or two instances I noticed that they were nervous and had to drink coffee to keep awake.

Q. What was the general effect on their
920 health working nights? A. They were nervous, restless, and rather hysterical.

The Court:

Q. At what time? A. That was during the day, not during the night.

Mr. Cunningham: (Resuming)

Q. Have you had occasion to examine waitresses who perform their work at night at all? A. A number of years ago while in my

services at Bellevue I examined a number of waitresses who complained of being flat footed. 921

Q. Do you know from what this flat foot came? A. From constantly standing and carrying weights.

Q. Their employment being largely performed on their feet throughout the day? A. Yes, sir. 922

Q. Did they make any complaint to you in respect to the strain upon them from carrying weights? A. No, sir.

Q. Did you ever observe any effects of that yourself? A. Not as a physician.

Q. Have you ever investigated the subject of employment of women nights in factories? 923
A. Yes, sir.

Q. To what extent? A. In offices and some canning factories.

Q. What have you observed as to the condition of such employees? A. That they were nervous and not fully nourished. 924

Mr. Hill: We object.

The Court: I think I will take that.

Mr. Hill: Exception.

The Court:

Q. What does this lack of nourishment come from? A. I can only tell what answers they gave me when I questioned them. 925

The Court: Strike that out, then.

Mr. Cunningham: (Resuming)

926 Q. To what did you ascribe this nervous condition? A. To attempting to sleep during the day.

Q. They have, in your judgment, not the natural time for sleep? A. Yes.

Q. Did you observe in them the same general nervous condition which you have already
927 told about in the case of trained nurses? A. No.

Q. A different degree of nervousness? A. Yes.

Q. In what way? A. It is rather difficult to explain. A nurse's work is very different
928 and they are intelligent women, more so than the women I met in factories. They were more hysterical. Nurses were apt to be more petulant and nervous. Nurses came to me as patients and consequently were not alarmed at anything I say, whereas I have met women in factories and questioned them and they
929 were frightened in a way.

Q. Have you yourself, Doctor, made any investigation on the subject of employment of waitresses in restaurants? A. No, sir.

Q. It has been testified to here, Doctor, that employment of women at night is beneficial. In your judgment, speaking as a physi-
930 cian, is such employment beneficial or detrimental? A. I believe it to be detrimental.

Q. Would continuous employment of women during night hours have an effect upon their child-bearing powers?

Mr. Hill: We object.

A. I could not answer that.

Q. You cannot answer that? A. No.

Mr. Cunningham: That is all.

CROSS-EXAMINATION by Mr. Hill:

Q. Doctor, the employment of women after ten o'clock, until half-past ten, eleven or twelve o'clock, in a restaurant serving ordinary lunches is not the kind of employment that is liable to produce any ill effect upon their nervous system, is it? A. No, sir. 931

Q. You saw the four ladies on the stand this afternoon? A. Yes, sir. 932

Q. And heard their testimony? A. Yes, sir.

Q. Was there anything in the appearance of those ladies that suggested to you the fact that they were not in perfect health? A. Well, I think the three ladies who sit on that side of the room look rather anemic. 933

Q. The four ladies called as witnesses?

(No response from the witness)

Q. Doctor, you were not called as an expert before any committee framing this law on account of your experience? A. No, sir. 934

Q. You are merely one of our women inspectors looking after women who work in factories? A. Factories principally, yes.

Q. You or counsel here had nothing to do with the framing of this law? A. No, sir. I had nothing to do with it.

Q. If you had had part in the discussion in the framing of this statute, or any statute, you know of many other classes of people in the State of New York that are in more need of legislation to preserve their health than waitresses and employees in restaurants? 935

Mr. Cunningham: I object to that.

The Court: I will sustain the objection.

A. I don't think I am at liberty to express
936 my opinion on that.

Q. There are no reasons occuring to you why females employed in restaurants should be discriminated against whereas in cases of other employment or employment of females in hotels there are no limitations imposed? A. I am not familiar with the subject at all,
937 Senator.

Q. Nothing occurs to you why they should discriminate against girls who are trying to earn an honest livlihood by working in a restaurant while they allow girls to work in hotels all night? A. No, sir, I don't see any
938 reason.

Q. Now, doctor, we don't like to reflect on the ladies, but their nature is more or less accutely formed than are we men, and they are more susceptible to impressions and therefore would appear more nervous than men under similar conditions? A. I am not able to an-
939 swer that question.

Q. Are not women as a rule more highly organized than men? A. Their nervous system is different from men.

Q. Therefore when a state officer like yourself walks into a factory where ladies are employed and you begin to talk to them it is not
940 uncommon for them to get nervous? A. I know of only one instance where they get nervous. That is in canning factories.

Q. What part of the state was that in? A. The central and western part of the state.

Q. You didn't suggest the enactment of the statute? A. No, sir.

Q. You had nothing to do with it? A. No, sir.

Q. In your wide experience as a physician nothing has occurred to you to lead you to 941
think you should tell the Legislature they should pass this law? A. Regarding night work for women?

Q. In restaurants? A. In any occupation, I should say, sir.

Q. Nothing why you should single out restaurants? A. I believe that is based on 942
the general principle that night time is the better time to sleep.

Q. That applies to men, too? A. Yes.

The Court:

Q. Is there any difference? A. I have found women who are employed at 943
night, when they return home in the day time to sleep they are apt to give too much time to domestic care, including themselves, whereas men do not. Men go to sleep.

Mr. Hill: Resuming. 944

Q. If the women did the same thing, retired upon their returning home, there would be no difference about that? A. I think the sleep is disturbed in both cases.

Q. If a woman has worked all night and goes home in the morning and goes to bed and goes to sleep, there is no reason why she 945
should not be refreshed as much as a man is there? A. No. It is about the same, I should say.

Q. In other words, if my friend here or I were required to work all night, as some boys are in a restaurant, and you were required to work all night and in the morning you both went to your respective homes, you would ex-

pect to get as much rest as he would? A. Cer-
946 tainly; under the same conditions. There is no difference in the sex.

Q. Occasionally we lawyers have to work nights? A. Yes.

Q. That does not mean that we are not fit for work the next day? A. I think you would be if you continued it right along.

947 Q. The amount of sleep people require depends somewhat on the organization of the individual, the nervous system of the individual? A. Yes, sir.

Q. I might require nine hours sleep and you might require but six, or conversely, you might require nine and I might require but
948 six? A. Yes.

Q. You have selected a few ladies out of your wide experience who were a little nervous, a few being in the hospital where they were taking care of the crazy lunatics. That would not lead you to the conclusion that all
949 people were nervous from working nights? A. No. They were private cases mostly. They were nervous and were unable to do as much as they could when they worked days. They asked me to give them some day occupation.

Q. The occupation of a night nurse in a
950 hospital would be more nerve racking than any other time during the twenty-four hours, would it not? A. Yes.

Q. The fact is the majority of people have their poor spells, as laymen call it, during the night? A. Between two and three in the morning.

Q. It is in the night? A. It is in the slee time.

Q. If a person is seriously sick there is always a fear that they will be worse during the night, if they are sick nigh to death? A. Yes. 951

Q. So the services of a nurse over a patient confined in the hospital or in the home is more during the night than it is during the day? A. Yes.

Q. Therefore they become more nervous than they do if they are employed during the day time? A. Yes. 952

Q. You know that nurse, if she can have her choice, prefers day service rather than night service? A. That is one reason, but you must understand that these people came to me as patients. They were not well.

Q. They were sick in the first place? A. Yes. They were in a nervous condition and could not work. 953

Q. Now, Doctor, there is not very much night employment waiting on an ordinary table,—if counsel and I should go in the rotissery up here on Main Street and order an oyster stew and one of these ladies weighing one hundred and sixty pounds waited on us, do you think there would be very much danger if she served us at ten o'clock at night? A. No. 954

Q. Or ten minutes after ten? A. No.

Q. Or eleven o'clock at night? A. No. 955

Q. Especially if she had not been working for nine hours during the day? A. No.

Q. There would be nothing injurious about that, would there? A. No; not especially.

Mr. Hill: That is all.

REDIRECT EXAMINATION by Mr. Cun-
956 ningham.

Q. But if that service continued day after day and week after week without rest it would have some effect upon her health, would it not? A. I believe it would.

Mr. Hill: We object to that, because
957 there is no evidence here that these people do not have rest. They have thirteen hours in which to rest.

Q. I will change the form of the question. That service rendered day after day or night after night, rather, would have a deleterious
958 effect upon their health? A. Yes, sir; if it interfered with their sleep, as I said before.

Mr. Cuningham: That is all.

RECROSS EXAMINATION by Mr. Hill:

Q. Nine hours out of twenty-four gives you
959 how many hours for sleep and recreation? A. Nine from twenty-four.

Q. It gives you fifteen hours, doesn't it? A. Yes.

Q. That is very ample time in these rushing days for people to recuperate? A. It depends whether it is a. m. or p. m. It is easier
960 to rest during the night than it is during the day, so you cannot qualify that.

Q. You know a great many people who find it just as easy to rest day time as night time? A. Very few.

Q. Don't you know where there is very heavy work to be done that it is night work? A. I do not, sir.

Q. Don't you know that ninety-five per cent. of the railroad work is night service? 961
A. I didn't know it was that much at present.

Q. Don't you know that the majority of trains that are run through New York are night trains? A. I believe so. I am not prepared to say.

Q. A great many of them are night trains? A. Yes. 962

Q. You know of men that stand at the throttle and run one hundred and fifty miles at night and continue doing that day in and day out until they get to be old men in the service? A. I don't know how long they continue, though.

Q. You know they continue until they get 963
to be seventy years old- A. No, I don't know it.

Q. That service is certainly as trying as any day service in a hotel or restaurant in this state? A. I should say it was more.

Q. They run street cars? A. Yes. But 964
there are swings in between.

Q. Women in New York are running street cars at night? A. Yes.

Q. In Brooklyn? A. Yes.

Q. They are in factories at night? A. I don't know.

Q. Don't you know that women are em- 965
ployed in factories in this city nights? A. I know in some places they are.

Q. And they are in the telephone service? A. Yes. I have had patients from that very class.

Q. This is an exclusion of women from the one service on earth they are best fitted by nature to perform? A. At present, yes.

Mr. Hill: That is all.

966 RE DIRECT EXAMINATION by Mr. Cunningham:

Q. You know that women work in factories up until ten o'clock at night? A. Yes.

Q. The Statute stops their working then? A. Yes. But that is not during the night.

967 Q. They cannot work before six in the morning? A. No.

Mr. Cunningham: That is all. We rest, Your Honor.

The Court: Very well.

968 Mr. Cunningham: I suppose the Court will take judicial cognizance of the fact that there is a statute which regulates railroad employees.

The Court: Yes, certainly.

The Court: Anything further, Senator?

969 Mr. Hill: No, I think not, Your Honor.

The Court: Is the evidence closed?

Mr. Cunningham: Yes.

970 Evidence closed.

Mr. Hill: If the Court please, I move that the defendant be acquitted of the charge preferred against him on the following grounds:

First, on all of the grounds set forth in defendant's answer in this action heretofore filed by him in this Court.

Second: On the further grounds that it is now established by a preponder- 971
ance of evidence that the alleged employment of Anna Smith of Buffalo, New York, on the 10th day of November, 1917, after ten o'clock at night was in pursuance of a contract existing between said Anna Smith and the said defendant, then in force, and entirely vol- 972
untarily on the part of said Anna Smith, and that said employment was not harmful to her, but healthful.

Third: On the ground that it is now established by preponderance of evidence, that the restaurant kept by the 973
said defendant at 635 Main Street, Buffalo, New York, was subject to the inspection of, and in fact was inspected by the Health Department of the City of Buffalo having supervision thereof and was found to be in a sanitary and hygienic condition on said 10th day of 974
November, 1917, and prior thereto and subsequent thereto.

Fourth: That it now establishes by a preponderance of evidence that restaurants in cities of the first and second class are subject to the inspection of 975
the State and Municipal Health authorities and are maintained in a sanitary and hygienic condition.

Fifth: On the further ground that it is now established by a preponderance of evidence that such employment of females before six o'clock in the morning and after ten o'clock in the evening in

restaurants in cities of the first and
976 second class of the State of New York,
was not and is not harmful to them, but
is an healthful employment.

Sixth: On the further ground that it
is now established that the employment
of females in restaurants in cities of the
first and second class in the State of
977 New York before 6 o'clock in the morn-
ing, or after 10 o'clock in the even-
ing prior to November 10th, 1917, and
subsequent thereto was not detrimental
to the morals of such employees, nor to
the people of cities of the first and sec-
978 ond class in the State of New York.

Seventh: That from the evidence it
has not been made to appear that the
defendant has committed any crime
and he therefore should be discharged.

Eighth: That said Chapter 535 of the
979 Laws of 1917, of the State of New York,
amending Section 161 of Article 12 of
the Act of the Legislature of New York,
entitled "An Act relating to Labor con-
stituting Chapter 31 of the Consoli-
dated Laws," being Chapter 36 of the
Laws of 1909, is repugnant to and in
980 violation of that part of Section 1 of
Article 14 of the Amendments to the
Constitution of the United States,
which reads as follows. "No State shall
make or enforce any law which shall
abridge the privileges or immunities of
citizens of the United States; nor shall
any state deprive any person of life,
liberty or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of 981
the laws," and is therefore null and void in that the State of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and property without due 982
process of law, and denied to such citizens within its jurisdiction the equal protection of the laws by unjustly discriminating between different classes of citizens, namely between females employed in restaurants in cities of the first and second class as distinguished 983
from females employed in restaurants in all other parts of the state outside of the cities of the first and second class, and has also distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak-rooms and parlors 984
and females employed in dining-rooms and kitchens of hotels and in lunch-rooms or restaurants conducted by employees for the benefit of their employee, which females so employed may work at any and all hours, night or day without limit. Said Act is unconstitu- 985
tional, discriminatory legislation, and is therefore null and void.

Ninth: That said Chapter 535 of the Laws of 1917 of the State of New York, amending Section 161 of Article 12 of the Act of the Legislature of New York, entitled "An Act relating to Labor constituting Chapter 31 of the Consolidated

Laws, being Chapter 36 of the Laws of
986 1909, is repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as follows: "No State * * * * * shall pass any * * law impairing the obligations of contract," in that said provisions prohibit the employment
987 of females in restaurants in cities of the first and second class for more than nine hours in any one day or before six o'clock in the morning, or after ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other, and such
988 statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith when said Act by its terms took effect on October 1st, 1917, and such provi-
989 sions also prohibit the continuance and completion of all other contracts between said defendant and all other female employees, who may have contracted to perform such services for said defendant in the said restaurant in Buffalo, which is a city of the first class,
990 for more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of any day, and therefore said Act is null and void.

Tenth: That said Chapter 535 of the Laws of 1917, of the State of New York, amending Section 161 of Article 12 of the Act of the Legislature of the State

of New York, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws of 1909," is repugnant to and in violation of Section 1 of Article 1 of the Constitution of the State of New York, which reads as follows: "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or judgment of his peers," and also that part of Section 6 of Article 1 of the Constitution of the State of New York, which reads as follows: "No person * * * * * * shall be deprived of life, liberty or property without due process of law," in that said provision of said Act transcend the Constitutional rights of its citizens freely to pursue lawful occupations by abridging the personal liberty and limiting their freedom to work as long as they please within general limits applicable to all alike for adult women are citizens and entitled to all the rights of citizenship under said Constitutional provisions, which are denied to women by said provisions of Chapter 535 of the Laws of 1917, in that females are absolutely prohibited from employment in certain restaurants before six o'clock in the morning and after ten o'clock in the evening of any day, no matter how short any such employment may be, and therefore said Act is null and void.

Eleventh: That the violation of an omission to comply with the provisions

of said Chapter 535 of the New York
996 Laws of 1917, did not constitute a crime subjecting the defendant to the penalties of Section 1275 of the Penal Law of the State of New York, which latter law was enacted prior to the enactment of said Chapter 535 of the Laws of 1917, for the reason that said Act is repug-
997 nant to and in violation of said provisions of the Constitution of the United States and of the State of New York, and therefore being null and void, and the defendant should therefore be acquitted of the foregoing alleged charge
998 made against him.

I, therefore, upon all the foregoing grounds move that the Court render a judgment acquitting the defendant of the charge and directing his release from custody.

999 The Court: I will take the matter under advisement, gentlemen, and will render my decision just as soon as I have had an opportunity to look into the question. You have a very difficult case here and I want to look into the questions presented here before render-
1000 ing my decision in the case.

Proceeding Adjourned Generally.

Proceedings October 15th, 1918—2.00 o'clock P. M.

The Court: I have given this case just as careful attention as I could. The Court has been very much aided by the able counsel in the case. I think the

case has been very fully and valuably presented by counsel on both sides. I think there is a question in the case upon which good lawyers may take different view point, and whether my decision is correct or not, I have made it with all consciousness. I think I have given it the best study I can on account of the importance of the case. I have delayed my decision longer than I possibly should have done by going back and working further on the case from time to time. I am going to deny Senator Hill's motion to discharge the defendant on all of the grounds stated. 1001 1002 1003

Mr. Hill: I take an exception on each ground.

Mr. Hill: I take an exception on each of the grounds stated.

The Court: My decision in this case is that the constitutionality of the law should be sustained, that is, that the Legislature in passing this statute was within the proper exercise of the police power of the state. 1004

Mr. Cunningham: The decision is that you find the defendant guilty? 1005

The Court: Yes, sir. I find the defendant guilty of the offense charged. Have either of you gentlemen anything to say with reference to disposition of the case?

Mr. Cunningham: I think, Your Honor, that the minimum fine should be imposed in this case.

The Court: Very well. I will impose a fine of twenty dollars.

1006

Mr. Hill: I except to the Court's decision on all of the grounds hereinbefore stated.

The Court: Certainly.

1007

EXHIBITS.

1008

EXHIBIT 1.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 1/17 1918

1009

Premises No. 635 Main ..... Street
Tenant, Rosticceria.... No. ..... Street
Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

Everything very clean, and in order.
Food on hand O. K.

1010

EXHIBIT 2.

367 Restaurant 1011

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 11/28 1917

Premises No. 635 Main ....(6:15 P. M.) ..Street

Tenant, Rosticceria.... No. ..... Street

Owner, Agent ..... No. ..... Street 1012

INSPECTOR'S MEMORANDUM

Place clean and sanitary. Food on hand O. K.

Made inspection here purposely at this hour (during rush of the evening meal). Found kitchen and methods of cooking & serving exceptionally clean. 1013

———

EXHIBIT 3.

367 Restaurant 1014

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 11/7 1917

Premises No. 635 Main ..... Street

Tenant, Rosticceria.... No. ..... Street

Owner, Agent ..... No. ..... Street 1015

INSPECTOR'S MEMORANDUM

Everything clean, and in order. Food on hand O. K.

EXHIBIT 4.

1016 367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 10/1 1917

Premises No. 635 Main ..... Street

Tenant, Rosticceria.... No. ..... Street

1017 Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

Place clean and in order. Food on hand O. K.

1018 EXHIBIT 5.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 7/23 1917

Premises No. 635 Main ..... Street

1019 Tenant, Rosticceria.... No. ..... Street

Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

Place clean and in order. Food on hand O. K.

1020 EXHIBIT 6.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 7/9 1917

Premises No. 635 Main ..... Street

Tenant, Rosticceria.... No. ..... Street

Owner, Agent ..... No. ..... Street

Exhibits.

INSPECTOR'S MEMORANDUM

Kitchen now very clean and in order. 1021
Food on hand O. K.
Some work still being done in cellar.

EXHIBIT 7.

1022

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 6/1 1917

Premises No. 635 Main ..... Street
Tenant T. R. & C., Inc... No. ..... Street
Owner, Agent ..... No. ..... Street 1023

INSPECTOR'S MEMORANDUM

Now open for business, but not all settled yet.
Will reinspect for final report.

1024

EXHIBIT 8.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 4/28 1917

Premises No. 635 Main ..... Street 1025
Tenant T. R. & C., Inc... No. ..... Street
Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

Met owners of business here, for general inspection.

It is the intention to have all new equipment

here, and everything modern and sanitary in ev-
1026 ery way.

Verbal instructions to enclose women's toilet room to ceiling, also, provide separate dressing-rooms for male & female employees.

1027 EXHIBIT 9.

File under 635 Main.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 4/26 1917

1028

Premises No. 334 Ellicott Square ..... Street
Tenant, Tauriello, Sebastian..No..... Street
Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

Conference with members of T. R. & C. Rest.,
1029 Inc., in rearrangements in new restaurant at 635 Main St.

Made appointment to make inspection there at 10;00 A. M. 4/27-17.

1030 EXHIBIT 10.

367 Restaurant

Irene M. Servoss, Inspector

BUREAU OF FOOD AND DRUGS

Buffalo, N. Y. 4/24 1917

Premises No. 635 Main ..... Street
Tenant, T. R. & C. Restaurant, Inc. No. .. Street
Owner, Agent ..... No. ..... Street

INSPECTOR'S MEMORANDUM

New restaurant to be opened here, with "Rotisseria" oven. Nothing yet done about fitting up. 1031

Headquarters of company at 334 Ellicott Square.

STIPULATION.

1032

(SAME TITLE)

It is hereby stipulated by the respective parties hereto that the foregoing case or record on appeal in the above entitled action contains Notice of Appeal, Judgment Roll, including the pleadings, the application for and allowance of appeal to the County Court of Erie County and all the evidence on the trial in the City Court of Buffalo by question and answer, the rulings on the trial by the City Court of Buffalo and the exceptions of all the parties to the record and all other proceedings had in said action in the City Court of Buffalo and the County Court of Erie County, New York, and said case may be settled accordingly. 1033 1034

GUY B. MOORE,
Attorney for the People of the State of New York. 1035

HENRY W. HILL,
Attorney for Defendant-Appellant.

ORDER SETTLING CASE ON APPEAL.

(SAME TITLE)

1036 The foregoing case contains the Notice of Appeal, Judgment Roll, including the pleadings and application for and allowance of appeal from the City Court of Buffalo to the County Court of Erie County and all the evidence on the trial in the City Court of Buffalo by question and answer the
1037 rulings on the trial of the City Court of Buffalo and the exceptions of all the parties to the record and all other proceedings had in said action in the City Court of Buffalo and the County Court of Erie County, New York, and it appearing to me that a proper presentation of this cause for re-
1038 view so requires, hereby direct the evidence and exhibits to be stated in full as is done in the foregoing and the same having been settled, pursuant to the foregoing stipulation is hereby signed by me and ordered to be filed in the Erie County Clerk's Office, said appeal having been argued be-
1039 fore me as County Judge of Erie County on March 1st, 1919, and my decision having been made affirming the judgment herein on March 26th, 1919.

Dated October 27th, 1919.

PHILIP A. LAING,

1040 *County Judge of Erie County*

AFFIDAVIT AS TO OPINION.

COUNTY COURT OF ERIE COUNTY. 1041

THE PEOPLE OF THE STATE OF NEW YORK,
Respondents,
against
JOSEPH RADICE, 1042
Appellant.

STATE OF NEW YORK, } ss.:
COUNTY OF ERIE. }

Henry W. Hill, being duly sworn, deposes and 1043
says, that he is an attorney and counsellor-at-law of the State of New York, and that he is the attorney for the defendant, who is the appellant in the above entitled action; that the only opinion written by Judge Philip A. Laing, the County Judge of Erie County, who heard the appeal from 1044
the City Court of Buffalo to the County Court of Erie County in the above entitled action, is the memorandum or opinion included in this record on appeal in the above entitled action.

HENRY W. HILL. 1045

Sworn to before me this 25th
day of October, 1919.

CORA M. SCOTT,
Notary Public in and for Erie County, N. Y.

STIPULATION WAIVING CERTIFICATION.

(SAME TITLE)

It is hereby stipulated that the foregoing are true copies of the original Notice of Appeal and Judgment Roll in the above entitled action, including application and allowance of appeal from the judgment of the City of Buffalo to the Erie County Court, the judgment of affirmance of the Erie County Court, the memorandum or opinion of Honorable Philip A. Laing, Erie County Judge, the information filed in the City Court of Buffalo against the defendant, the warrant of arrest and endorsement of his plea of not guilty thereon, Chapter 535 of the New York Laws of 1917, the return in said action made by Honorable Albert A. Hartzell, Judge of the City Court of Buffalo, the answer of Joseph Radice in said action, the testimony on the trial and ten exhibits offered by the defendant and received in evidence and the motion at the close of the trial for the acquittal of the defendant on eleven stated grounds therefor and the rulings of the Trial Court thereon and the exceptions by appellant to each of such rulings and also all other papers in the Judgment Roll in this action on file in the Erie County Clerk's Office and certification thereof by said Clerk of Erie County, New York, is hereby waived.

Dated October 27th, 1919.

GUY B. MOORE,
District-Attorney.
Attorney for the People Respondent.

HENRY W. HILL,
Attorney for Appellant.

ORDER AND JUDGMENT OF AFFIRMANCE OF THE APPELLATE DIVISION OF THE SUPREME COURT, FOURTH DEPARTMENT.

1051

At a term of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department at the City of Rochester, N. Y., commencing on the 2nd day of May, 1922. 1052

Present: Hon. Frederick W. Kruse, Presiding Justice.

Hon. Irving G. Hubbs, Hon. William W. Clark, Hon. Rowland L. Davis, Hon. Charles B. Sears, Associate Justices. 1053

PEOPLE OF THE STATE OF NEW YORK,
Respondents,
vs.
JOSEPH RADICE,
Appellant. 1054

The above named Joseph Radice, defendant in this action having appealed to the Appellate Division of the Supreme Court, Fourth Department, from a judgment of the Erie County Court entered in the office of the Clerk of the County of Erie, on the 26th day of March, 1919, and the said appeal having been argued by Mr. Henry W. Hill, of the counsel for the appellant, by Mr. Walter F. 1055

Hofheins, of counsel for the respondent, and due deliberation having been had thereon,

1056 It is hereby Ordered, That the judgment of conviction so appealed from be, and the same hereby is, affirmed.

All concur.

HERBERT E. WAIT,

1057 *Clerk.*

Entered 3rd day of May, 1922.

Enter: Frederick W. Kruse.

1058 Supreme Court
Appellate Division
Fourth Judicial Department } ss:
Clerk's Office, Rochester, N. Y.

I, Herbert E. Wait, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that the with-

1059 in is a true copy of the original order, made by said Court upon the appeal in the within entitled action or proceedings, and of the whole thereof, and that the original case and papers upon which said appeal was heard are hereunto annexed.

1060 In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this 3rd day of May, 1922.

HERBERT E. WAIT,
Clerk.

ERIE COUNTY COURT JUDGMENT OF AFFIRMANCE.

At a Term of the County Court of Erie County held in the City and County Hall, at the City of Buffalo, N. Y., on the 16th day of May, 1922. 1061

Present: Hon. Thomas H. Noonan, County Judge. 1062

PEOPLE OF THE STATE OF NEW YORK,

vs.

JOSEPH RADICE, 1063

Defendant.

An appeal having been taken to the Appellate Division of the Supreme Court, Fourth Department, from a judgment convicting the defendant of violation of sub-division 3, Section 161 of the Labor Law of the State of New York, and from an order of said County Court of Erie County affirming the judgment of conviction of the defendant of said crime in the City Court of Buffalo, and entered in the Erie County Clerk's Office on the 26th day of March, 1919, and said appeal having been brought on for argument before the said Appellate Division of the Supreme Court, and said judgment of conviction and order so appealed from having been unanimously affirmed on the 3rd day of May, 1922, by the said Appellate Division. 1064 1065

Now on motion of Guy B. Moore, District Attorney of Erie County, it is

1066 ORDERED AND ADJUDGED that said judgment of conviction and order so appealed from, be and the same hereby are affirmed.

THOMAS H. NOONAN,
County Judge of Erie County.

1067 Granted May 16, 1922.

JAMES V. WALSH,
Special Deputy Clerk.

1068 **AFFIDAVIT AS TO NO OPINION IN THE APPELLATE DIVISION.**

(SAME TITLE)

STATE OF NEW YORK } ss:
County of Erie }

1069 Henry W. Hill, being duly sworn, deposes and says, that he is an attorney and counsellor-at-law of the State of New York, and that he is the attorney for the defendant, who is the appellant in the above entitled action; that no opinion of any
1070 of the Justices of the Appellate Division of the Fourth Department was written and handed down with the decision of the Appellate Division of the Fourth Department affirming the judgment of conviction in the above entitled action, and that the only opinion or memorandum in said action is that written by Judge Philip A. Laing, County Judge of Erie County, who heard the ap-

peal from the City of Buffalo to the County Court of Erie County, which is included in said record at Folios 76-86, found on pages 16 to 18 inclusive of said record.

HENRY W. HILL.

Sworn to before me
this day of May, 1922.
DILWORTH M. SILVER,
Notary Public,
Erie County, N. Y.

ORDER OF APPELLATE DIVISION ALLOWING DEFENDANT TO APPEAL TO THE COURT OF APPEALS.

At a term of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department, at the City of Rochester, N. Y., commencing on the 2nd day of May, 1922.

Present: Hon. Frederick W. Kruse, Presiding Justice; Hon. Irving G. Hubbs, Hon. William W. Clark, Hon. Rowland L. Davis, Hon. Charles B. Sears, Associate Justices.

(SAME TITLE)

The above named Joseph Radice, appellant herein, having, on the 10th day of May, 1922, duly moved before this Court for an order granting to him leave to appeal to the Court of Appeals from the judgment of affirmance entered upon the order

of affirmance heretofore and on the 3rd day of May, 1922, duly made and entered herein by this Court.

1076

Now, after reading and filing the affidavit of Henry W. Hill verified the 8th day of May, 1922, the notice of said motion, together with proof of due service thereof upon counsel for the opposing party, and upon all the proceedings heretofore

1077 had and taken herein, after hearing Mr. Henry W. Hill of Counsel for appellant, in favor of said motion, and Mr. Guy B. Moore, Counsel for respondent, in opposition thereto, and due deliberation having been had thereon.

1078 It is Hereby Ordered, that the said motion be, and the same hereby is, granted, and this Court doth hereby certify that in its opinion a question of law is involved herein which ought to be reviewed by the Court of Appeals.

HERBERT E. WAIT,

1079 *Clerk.*

Enter: Frederick W. Kruse.

Entered 17th day of May, 1922.

1080

Supreme Court
Appellate Division
Fourth Judicial Department
Clerk's Office, Rochester, N. Y. } ss:

I, Herbert E. Wait, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that the within is a true copy of the original order, now on file in this office, and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this 17th day of May, 1922. 1081

HERBERT E. WAIT,
Clerk.

NOTICE OF APPEAL TO THE COURT OF APPEALS. 1082

(SAME TITLE)

Please Take Notice that the defendant, Joseph Radice, in the above entitled action, as authorized 1083
by an order herein of the Appellate Division of the Supreme Court in and for the Fourth Department made and entered in the office of the Clerk thereof on the 17th day of May, 1922, hereby appeals to the Court of Appeals from the order and judgment of the Appellate Division in and for the 1084
Fourth Department in the above entitled action made on the 2nd day of May, 1922, and entered on the 3rd day of May in the office of the Clerk of said Appellate Division and from the judgment of affirmance of the County Court of Erie County, New York, in the above entitled action, entered on the 16th day of May, 1922, upon the order 1085
of affirmance thereof made by the Appellate Division of the Supreme Court in and for the Fourth Department in the above entitled action on the 2nd day of May, 1922, which said Appellate court judgment of affirmance of said Erie county court judgment and said order of the Appellate Division of the Supreme Court in and for the Fourth Department were entered in the office of the Clerk of the County of Erie on the 16th day of May,

1922, and said order of said Appellate Division of the Supreme Court and said judgment of affirmance of the Erie County Court affirmed the judg-
1086 ment rendered in the above entitled action in the City Court of Buffalo on the 15th day of October, 1918, convicting the defendant of violating subdivision 3 of Section 161 of Article 12 of the Labor Law as amended by Chapter 635 of the Laws of 1917 and imposed a fine of $20.00 upon him, which
1087 was duly paid and the said defendant, Joseph Radice, hereby appeals to the Court of Appeals of the State of New York from each and every part of said order herein and judgment herein of the Appellate Division of the Supreme Court in and for the Fourth Department and from every part
1088 of said judgment of affirmance of the Erie County Court in the above entitled action and from the whole of said order and judgments now on file in the office of the Clerk of Erie County, New York.

1089 Dated Buffalo, N. Y., May 18th, 1922.

HENRY W. HILL,
Attorney for Defendant-Appellant,
Office and Post Office Address,
No. 906 Mutual Life Building,
Buffalo, N. Y.

1090 To Hon. Guy B. Moore,
District Attorney of Erie County,

To Herbert E. Wait,
Clerk of the Appellate Division of the Supreme Court in and for the Fourth Department,

and

To Hon. Arthur R. Atkinson,
County Clerk of Erie County.

STIPULATION OF THE PARTIES WAIVING THE CERTIFICATION OF THE RECORD BY THE CLERK OF ERIE COUNTY.

1091

(SAME TITLE)

It is hereby stipulated by the District Attorney of Erie County, representing the People of the State of New York, and by the attorney for the 1092
defendant-appellant in the above entitled action that the foregoing are true copies of the original Notice of Appeal to the Court of Appeals of the State of New York from the order and judgment of affirmance of the Appellate Division of the Supreme Court in and for the Fourth Department, 1093
in the above entitled action made on the 2nd day of May, 1922, and entered in the Office of the Clerk of said Appellate Division on May 3rd, 1922, and a certified copy thereof entered in the Office of the Clerk of the County of Erie on May 16th, 1922, and also Notice of Appeal from the judgment of 1094
affirmance of the County Court of Erie County in said action entered upon said order and judgment of said Appellate Division on the 16th day of May, 1922, and also are true copies of said order and judgment of affirmance of the Appellate Division of the Supreme Court in the above enti- 1095
tled action and of the order allowing an appeal to the Court of Appeals and of the affidavit of Henry W. Hill showing that no opinion was rendered by any of the Judges in the Appellate Division of the Supreme Court in and for the Fourth Department on the affirmance of said judgment and they are also true copies of the judgment roll

in the above entitled action including the application and allowance of an appeal from the judgment of the City Court of Buffalo, convicting the
1096 defendant of violating subdivision 3 of section 161 of the Labor Law as amended by chapter 535 of the laws of 1917, to the County Court of Erie County and of the judgment of affirmance of said County Court of Erie County thereon, the memorandum or opinion of Honorable Philip A. Laing,
1097 Erie County Judge, the information filed in the City Court of Buffalo against the defendant, the warrant of arrest and endorsement of his plea of not guilty thereon, chapter 535 of the New York laws of 1917, the return in said action made by Honorable Albert A. Hartzell, Judge of the City
1098 Court of Buffalo, the answer of the defendant Joseph Radice in said action, the case and exceptions containing all the evidence by question and answer on the trial of said defendant as settled and ordered filed, the rulings of the Court and exceptions taken by all the parties to the record
1099 and they are also true copies of the ten exhibits offered by the defendant and received in evidence and of the motion at the close of the trial for the acquittal of the defendant on the eleven stated grounds therefor and the rulings of the trial Court thereon and the exceptions taken by the defend-
1100 ant to each of such rulings and the foregoing are also true copies of all such papers and all other papers in the judgment roll in said action on file in the County Clerk's Office of Erie County, and it is further hereby stipulated that certification of all such papers by the Clerk of Erie County,

New York, in this record on appeal be and the same is hereby expressly waived as authorized by the rules of the Court of Appeals of the State of New York and by the provisions of law in such case made and provided.

Dated May 19th, 1922.

GUY B. MOORE,
District Attorney of Erie County,
Attorney for the People Respondent.

HENRY W. HILL,
Attorney for Defendant-Appellant.

Clerk's Certificate.

STATE OF NEW YORK, *ss:*

City Court of Buffalo.

I, George W. Reibold, Chief Clerk of the City Court of Buffalo do hereby certify that the annexed Appeal Book and Remittitur in the case of the People of the State of New York, Respondent against Joseph Radice, Appellant, in the Court of Appeals of the State of New York is a true, full and complete printed record used upon the hearing of said case in said Court of Appeals, which is the highest court of the State of New York, and of the Remittitur of said record from said Court of Appeals to the City Court of Buffalo.

And I do further certify that twenty-five additional copies of said printed record in said action have been lodged with the Clerk of the City Court of Buffalo and the same are to be transmitted uncertified herewith to the Supreme Court of the United States for review.

In witness whereof I have hereunto subscribed my name and affixed the seal of the City Court of Buffalo, New York in the City of Buffalo and State of New York on this 15th day of December in the year of our Lord one thousand nine hundred and twenty-two. George W. Reibold, Chief Clerk of the City Court of Buffalo. [Seal City Court of Buffalo.]

STATE OF NEW YORK:

City Court of Buffalo.

[Title omitted.]

Petition for Writ of Error.

[Filed Nov. 24, 1922.]

To the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York:

The petition of Joseph Radice, who resides in the City of Buffalo in the County of Erie and State of New York, respectfully shows:

First. That he is a citizen of the United States and was such on the 10th day of November, 1917, and prior thereto and that heretofore and on the 18th day of December, 1917, the petitioner was brought before a Judge of the City Court of Buffalo in the County of Erie and State of New York on an information verified on the 13th day of December, 1917, charging the petitioner with the violation on or about November 10th, 1917, of the provisions of Section 161 of Article 12 of an act of the Legislature of the State of New York, entitled "An Act relating to Labor constituting chapter 31 of the Consolidated Laws," being chapter 36 of the Laws of 1909 as amended

several subsequent laws and especially by chapter 535 of the laws of 1917 in that the petitioner, as a partner in the restaurant known as T. R. and C. Restaurant at 635 Main Street, in the City of Buffalo and County of Erie, did employ and permit one Anna Smith of 592 Niagara Street in the City of Buffalo and County of Erie, a woman to work in the said restaurant as a waitress after 10 P. M. to wit: 1:03 P. M., that is on November 10th, 1917.

Second. That chapter 535 of the Laws of 1917 of the State of New York took effect on October 1st, 1917, and added a new subdivision to section 161 of the Labor Law, known as subdivision 3, which reads as follows:

"3. In cities of the first and second class no female over the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any restaurant more than six days or fifty-four hours in any one week, or more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of any day. This subdivision shall, however, not apply to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor shall it apply to females employed in or in connection with the dining rooms and kitchens of hotels, or in or in connection with lunch rooms or restaurants conducted by employers solely for the benefit of their own employees."

Third. That the petitioner on being arraigned in the City Court of Buffalo pleaded not guilty to said charge and also interposed a formal answer to said charge which among others contained the following defenses:

"First. That the facts stated in said information do not constitute a crime.

Second. That said act, namely, Chapter 535 of the Laws of 1917, in limiting the hours of labor of women employed in restaurants in cities of the first and second class to nine hours in any one day and absolutely prohibiting their employment before six o'clock in the morning and after ten o'clock in the evening of any day, while not applying to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor applying to females employed in dining rooms and kitchens of hotels, nor to those employed in lunch rooms or restaurants, conducted by employers for the benefit of their employees, is null and void in that the foregoing provisions thereof are repugnant to and in violation of that part of Section 1 of Article 14 of the Amendments to the Constitution of the United States, which reads as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,' in that the State of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and property without due process of law and denied to such citizens

within its jurisdiction the equal protection of the laws by unjustly discriminating between different classes of its citizens, namely, between females employed in restaurants in the cities of the first and second class as distinguished from females employed in restaurants in all other parts of the state outside of the cities of the first and second class and also as distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak rooms and parlors and females employed in dining rooms and kitchens of hotels and in lunch rooms, or restaurants conducted by employers for the benefit of their employees which females so employed may work at any and all hours, night or day without limit. Said Act is unconstitutional discriminatory legislation and is therefore null and void. * * *

Fourth. The said provisions of Chapter 535 of the Laws of 1917 are repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as follows: 'No state * * * shall pass any * * * law impairing the obligations of contracts' in that said provisions prohibit the employment of females in restaurants in cities of the first and second class for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other and such statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith, when said Act by its terms took effect on October first in the year 1917, and such provisions also prohibit the continuance and completion of all other contracts between said defendant and all other female employees, who may have contracted to perform such services for said defendant in his said restaurant in Buffalo, which is a city of the first class, for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and therefore said act is null and void."

Fourth. That the trial proceeded before Judge Albert A. Hartzell, a Judge of the City Court of Buffalo, without a jury, and was continued several days and at the conclusion of the evidence the petitioner, through his counsel, moved the Court that he be acquitted of the charge preferred against him among others on the following grounds:

"First. On all of the grounds set forth in defendant's answer in this action heretofore filed by him in this Court.

Second. On the further grounds that it is now established by a preponderance of evidence that the alleged employment of Anna Smith of Buffalo, New York, on the 10th day of November, 1917, after ten o'clock at night was in pursuance of a contract existing between said Anna Smith and the said defendant, then in force, and entirely voluntarily on the part of said Anna Smith, and that said employment was not harmful to her, but healthful.

Third. On the ground that it is now established by preponderance of evidence, that the restaurant kept by the said defendant at 635

Main Street, Buffalo, New York, was subject to the inspection of, and in fact was inspected by the Health Department of the City of Buffalo having supervision thereof and was found to be in a sanitary and hygienic condition on said 10th day of November, 1917, and prior thereto and subsequent thereto.

Fourth. That it now establishes by a preponderance of evidence that restaurants in cities of the first and second class are subject to the inspection of the State and Municipal Health authorities and are maintained in a sanitary and hygienic condition.

Fifth. On the further ground that it is now established by a preponderance of evidence that such employment of females before six o'clock in the morning and after ten o'clock in the evening in restaurants in cities of the first and second class of the State of New York, was not and is not harmful to them, but is an healthful employment.

Sixth. On the further ground that it is now established that the employment of females in restaurants in cities of the first and second class in the State of New York before 6 o'clock in the morning, or after 10 o'clock in the evening prior to November 10th, 1917, and subsequent thereto was not detrimental to the morals of such employees, nor to the people of cities of the first and second class in the State of New York.

Seventh. That from the evidence it has not been made to appear that the defendant has committed any crime and he therefore should be discharged.

Eighth. That said Chapter 535 of the Laws of 1917, of the State of New York, amending Section 161 of Article 12 of the Act of the Legislature of New York, entitled "An Act relating to Labor constituting Chapter 31 of the Consolidated Laws," being Chapter 36 of the Laws of 1909, is repugnant to and in violation of that part of Section 1 of Article 14 of the Amendments to the Constitution of the United States, which reads as follows. 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,' and is therefore null and void in that the State of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and property without due process of law, and denied to such citizens within its jurisdiction the equal protection of the laws by unjustly discriminating between different classes of citizens, namely between females employed in restaurants in cities of the first and second class as distinguished from females employed in restaurants in all other parts of the state outside of the cities of the first and second class, and has also distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak-rooms and parlors and females employed in dining-rooms and kitchens of hotels and in lunchrooms or restaurants conducted by employees for the benefit of their employee, which females so employed may work at any and all hours, night or day without limit.

Said Act is unconstitutional, discriminatory legislation, and is therefore null and void.

Ninth. That said Chapter 535 of the Laws of 1917 of the State of New York, amending Section 161 of Article 12 of the Act of the Legislature of New York, entitled "An Act relating to Labor constituting Chapter 31 of the Consolidated Laws, being Chapter 36 of the Laws of 1909, is repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as follows: 'No State * * * shall pass any * * * law impairing the obligations of contract,' in that said provisions prohibit the employment of females in restaurants in cities of the first and second class for more than nine hours in any one day or before six o'clock in the morning, or after ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other, and such statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith when said Act by its terms took effect on October 1st, 1917, and such provisions also prohibit the continuance and completion of all other contracts between said defendant and all other female employees, who may have contracted to perform such services for said defendant in the said restaurant in Buffalo, which is a city of the first class, for more than nine hours in any one day, or before six o'clock in the morning or after ten o'clock in the evening of any day, and therefore said Act is null and void.

* * * * * * *

Eleventh. That the violation of an ommission to comply with the provisions of said Chapter 535 of the New York Laws of 1917, did not constitute a crime subjecting the defendant to the penalties of Section 1275 of the Penal Law of the State of New York, which latter law was enacted prior to the enactment of said Chapter 535 of the Laws of 1917, for the reason that said Act is repugnant to and in violation of said provisions of the Constitution of the United States and of the State of New York, and therefore being null and void, and the defendant should therefore be acquitted of the foregoing alleged charge made against him.

I, therefore, upon all the foregoing grounds move that the Court render a judgment acquitting the defendant of the charge and directing his release from custody."

Thereafter on the 15th day of October, 1918, the City Court of Buffalo convened, Judge Albert A. Hartzell presiding, and denied petitioner's motion for his discharge on all of the grounds hereinbefore stated, to each of which rulings the petitioner duly excepted, whereupon the following proceedings were had:

"The Court: My decision in this case is that the constitutionality of the law should be sustained, that is, that the Legislature in passing this statute was within the proper exercise of the police power of the state.

Mr. Cunningham: The decision is that you find the defendant guilty?

The Court: Yes, sir. I find the defendant guilty of the offense charged. Have either of you gentlemen anything to say with reference to disposition of the case?

Mr. Cunningham: I think, Your Honor, that the minimum fine should be imposed in this case.

The Court: Very well. I will impose a fine of twenty dollars.

Mr. Hill: I except to the Court's decision on all of the grounds hereinbefore stated.

The Court: Certainly."

Fifth. That on the 15th day of October, 1918, the Court rendered its decision, denying the petitioner's motion that the defendant, now this petitioner, be acquitted of the offense charged against him on all the grounds stated in paragraph Fourth supra and the petitioner thereupon duly excepted to the Court's ruling on each of the grounds stated in the petitioner's motion for acquittal and thereupon the Court found the petitioner guilty of the offense charged against him and imposed a fine of twenty dollars, to which decision of the Court on all the grounds hereinbefore stated the petitioner duly excepted and thereafter the petitioner applied to the Honorable County Court of Erie County, New York, that being the Court having jurisdiction in criminal cases of appeals from the City Court of Buffalo, for an allowance of an appeal to the County Court of Erie County, New York, from said judgment of the City Court of Buffalo, convicting the petitioner as aforesaid of said crime and in his application to the Erie County Court for an allowance of said appeal he alleged that the City Court of Buffalo had committed various errors in convicting the petitioner of the violation of said law and imposing upon him a fine of twenty dollars under Section 1275 of the Penal Law of the State of New York on the following grounds among others, namely:

"First. That the facts proved upon said trial do not constitute a crime.

Second. That Chapter 535 of the laws of 1917, in limiting the hours of labor of women employed in restaurants in cities of the first and second class to nine hours in any one day and absolutely prohibiting their employment before six o'clock in the morning and after ten o'clock in the evening of any day, while not applying to females employed in restaurants as singers and performers of any kind, or as attendants in ladies' cloak rooms and parlors, nor applying to females employed in dining rooms and kitchens of hotels, nor to those employed in lunch rooms or restaurants, conducted by employers for the benefit of their employees, is null and void; in that the foregoing provisions of chapter 535 of the Laws of 1917 are repugnant to and in violation of that part of Section 1 of Article 14 of the amendments to the Constitution of the United States, which reads as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,' in that the state of New York by such legislation has abridged the privileges and immunities of citizens of the United States and deprived them of their liberty and property without due process of law and denied to such citizens within its jurisdiction the equal protection of the laws by unjustly discriminating between different classes of its citizens, namely between females employed in restaurants in the cities of the first and second class as distinguished from females employed in restaurants in all other parts of the state outside of the cities of the first and second class and also as distinguished from females employed in restaurants as singers and performers of any kind and as attendants in ladies' cloak rooms and parlors and females employed in dining rooms and kitchens of hotels and in lunch rooms, or restaurants conducted by employers for the benefit of their employees, which females so employed may work at any and all hours, night or day without limit. Said act is unconstitutional, discriminatory legislation and is therefore null and void and the Court committed error in deciding otherwise and that said act was a valid and constitutional enactment and in imposing judgment upon the defendant for violating the provisions thereof.

* * * * * * *

Fourth. The said provisions of Chapter 535 of the Laws of 1917 are repugnant to and violative of that part of Section 10 of Article 1 of the Constitution of the United States, which reads as follows: 'No state * * * shall pass any * * * law impairing the obligations of contracts' in that said provisions prohibit the employment of females in restaurants in cities of the first and second class for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and thereby deprive citizens of their right to contract with each other and such statutory provisions also prohibited the continuance and completion of the contract of employment existing between the defendant and said Anna Smith, when said act by its terms took effect on October first in the year 1917, and such provisions also prohibit the continuance and completion of all other contracts between said defendant and all other female employees, who may have contracted to perform such services for said defendant in his said restaurant in Buffalo, which is a city of the first class, for more than nine hours in any one day, or before six o'clock in the morning, or after ten o'clock in the evening of any day and therefore said act is null and void.

The Court committed error in deciding otherwise and that said act was a valid and constitutional enactment and in imposing judgment upon defendant for violating the provisions thereof.

Fifth. The Court committed error in denying defendant's motion at the conclusion of the testimony that he be acquitted of the offense charged against him and be discharged from custody on the several grounds, which are fully set forth in the stenographer's minutes of

the trial and made a part hereof to which rulings of the Court, the defendant duly excepted.

Sixth. That on the trial it was established by a preponderance of evidence:

1. That the defendant is and was on November 10th, 1917, a citizen of the United States engaged in operating a restaurant at 635 Main Street in the City of Buffalo, New York, which is a city of the first class in the State of New York, and had been so engaged for several months prior thereto.

2. That the defendant prior to October 1st, 1917, had entered into a contract for the employment of one Anna Smith in his said restaurant as waitress at 635 Main Street in Buffalo, New York, after ten o'clock at night and the entering into said contract by said Anna Smith was an entirely voluntary act on her part and said employment was not harmful to her, but healthful.

3. That said restaurant was under the supervision of the Health Department of the City of Buffalo and found to be in a sanitary and hygienic condition on November 10th, 1917, and subsequently thereto and prior thereto.

4. That restaurants in the cities of the first and second class in the State of New York are subject to the inspection and supervision of the state and municipal health authorities and are maintained in a sanitary and hygienic condition.

5. That it is now established by a preponderance of evidence that such employment of females before six o'clock in the morning and after ten o'clock in the evening in restaurants in cities of the first and second class of the State of New York, was not and is not harmful to them, but is an healthful employment.

6. That it is now established that employment of females in restaurants in cities of the first and second class in the State of New York before six o'clock in the morning, or after ten o'clock in the evening prior to November 10th, and subsequently thereto was not detrimental to the public health nor injurious to the morals of such employees, nor to the people of the cities of the first and second class in the State of New York.

7. That it was also established upon the trial by a preponderance of evidence that the employment of females in restaurants in cities of the first and second class in the State of New York, before six o'clock in the morning and after ten o'clock at night, but not to exceed 54 hours in any one week, was a normal occupation for such females and not injurious to them, nor harmful to the public.

That the establishment of facts contained in the record and briefly set forth in the foregoing subdivisions one to seven inclusive of paragraph sixth hereof demonstrates the absence of conditions in cities of the first and second class of the State of New York in October, 1917, prior thereto and thereafter warrantying, under either the foregoing provisions of the State Constitution or under the foregoing provisions of the Federal Constitution of the United States, the enactment of said Statute (Ch. 535 of the Laws of 1917) and the Court committed error in not deciding said statute to be

repugnant to and in violation of Sections 1 and 6 of Article 1 of the Constitution of the State of New York, and also repugnant to and in violation of both Section 10 of Article 1 and Section 1 of Article 14 of the Amendments of the Constitution of the United States and therefore null and void and in not acquitting the said defendant and in not discharging him from custody.

Seventh. That on all the evidence and motions made at the conclusion of the trial, the Court committed error in not acquitting the defendant of the said charge preferred against him and in not discharging defendant from custody, to all of which rulings of the Court, this defendant duly excepted.

Deponent further says that on the 15th day of October, 1918, he was adjudged guilty by said City Court of Buffalo of violating and omitting to comply with the provisions of Section 161 of Article 12 of the Act of the Legislature of the State, entitled "An Act relating to Labor, constituting Chapter 31 of the Consolidated Laws," being chapter 36 of the Laws of 1909, as amended by Chapter 535 of the Laws of 1917, and fined under Section 1275 of the Penal Law of the State of New York."

That on December 2nd, 1918, Hon. Philip A. Laing, Judge of the County Court of Erie County, allowed an appeal from said judgment of conviction of this petitioner to the County Court of Erie County and thereafter said appeal was duly argued by the attorney for the petitioner, who was the appellant and by the District Attorney of Erie County for the People of the State of New York and on the 25th day of June, 1919 said judgment of conviction was affirmed by the County Court of Erie County and an appeal was then taken from the judgment of affirmance of the County Court of Erie County to the Appellate Division of the Supreme Court for the Fourth Department of the State of New York.

Sixth. That thereafter said appeal was duly argued in the Appellate Division of the Supreme Court for the Fourth Department and thereafter on the 3rd day of May, 1922, the said judgment of the Erie County Court of conviction of the petitioner was unanimously affirmed by said Appellate Division of the Supreme Court for the Fourth Department and thereafter on May 10th, 1922, the petitioner duly moved said Appellate Division of the Supreme Court for leave to appeal to the Court of Appeals of the State of New York and said Appellate Dvision on May 17th, 1922, granted said application and allowed this petitioner to appeal from said judgment of affirmance of said Appellate Division of the Supreme Court to the Court of Appeals of the State of New York and certified in its opinion that a question of law was involved which ought to be reviewed by the Court of Appeals and the petitioner thereafter on the 27th day of May, 1922, perfected said appeal to the said Court of Appeals and thereafter and on the 7th day of June, 1922, said appeal was argued before said Court of Appeals on behalf of the appellant, the petitioner herein, and duly submitted on the part of respondent, the People of the State of New York and thereafter and on the 11th day of July, 1922, said Court of Appeals unanimously affirmed without opinion said judgment of the said Appellate Division of the Supreme

Court for the Fourth Department which affirmed the said judgment of the County Court of Erie County, and that affirmed the said judgment of the City Court of Buffalo, convicting the petitioner of the violation of said subdivision 3 of section 161 of the Labor Law hereinbefore set forth and said judgment of the Court of Appeals, which is the highest court in the State of New York, ordered that the record of said case be remitted to the City Court of Buffalo to be enforced according to law, where said record is now filed.

Seventh. That upon said trial and upon motions made therein and upon said appeals and subsequent motions which were made before the County Judge of Erie County, New York, and in the Appellate Divison of the Fourth Department of the Supreme Court of the State of New York and in the Court of Appeals of the State of New York the petitioner duly argued and insisted that this petitioner, who was defendant in said action should be acquitted of said charge or alleged offense and discharged from legal custody on all the grounds hereinbefore set forth, stating that said subdivision 3 of Section 161 of the Labor Law, enacted by Chapter 535 of the Laws of 1917 of the State of New York hereinbefore set forth is in conflict with and in violation of section one of article Fourteen of the Amendments of the Constitution of the United States for that the State of New York by and through the provisions of said subdivision 3 of section 161 enacted by Chapter 535 of the Laws of 1917 assumes and seeks (1) to deprive the petitioner appellant-defendant in said courts and to be the plaintiff in error and certain other citizens of the United States and of the State of New York of rights, privileges and immunities secured to other citizens of the United States and of the State of New York; (2) to deprive this petitioner to be the plaintiff in error and other citizens of the United States of liberty and property without due process of law; (3) to deprive and to deny to the petitioner and certain citizens and persons within the jurisdiction of the State of New York of the equal protection of the law. The motions made by this petitioner in all of said courts were overruled by the Judges thereof on each and on all the grounds stated by this petitioner in urging the granting of said motions, to each and all of which rulings of said courts this petitioner duly excepted. Said decisions of said courts and judges and each of them denied to this petitioner a title, right, privilege and immunity held by this petitioner under the Constitution of the United States and also deprived and denied to this petitioner liberty and property without due process of law and also denied to this petitioner the equal protection of the law. That said judgment of the City Court of Buffalo so affirmed by the Court of Appeals is a final judgment of the highest court of the State of New York.

Wherefore the petitioner presents herewith an exemplified transcript of the record of the City Court of Buffalo in the State of New York, including the order and judgment of affirmance of the Court of Appeals, which is the highest court of the State, which said last mentioned judgment was made the judgment of the City Court of Buffalo in said case August 30, 1922, and the petitioner prays that a writ of error may issue and that he may be allowed to bring up for

review before the Supreme Court of the United States the said judgment of the Court of Appeals of the State of New York affirming the judgment of the City Court of Buffalo, affirmed by the order of the County Court of Erie County, which order was unanimously affirmed by the order of the Appellate Division of the Supreme Court for the Fourth Department and the latter order was unanimously affirmed by the judgment of the Court of Appeals, the highest court of the State of New York, whose said judgment of affirmance was made the judgment of the City Court of Buffalo in said case on August 30th, 1922, in order that the errors complained of may be reviewed in the Supreme Court of the United States and that the said judgment of said Court of Appeals and the judgments of affirmance of said appellate courts and the said judgment of the City Court of Buffalo, may be reversed, and the petitioner also prays that citation be granted and signed; that the bond herewith presented be approved and the petitioner also prays that he may have such other or further relief in the premises as may be just and proper.

Dated November 11th, 1922. Joseph Radice. Henry W. Hill, Attorney for Petitioner, 906 Mutual Life Building, 210 Pearl Street, Buffalo, New York.

STATE OF NEW YORK,
County of Erie,
City of Buffalo, ss:

Joseph Radice, being duly sworn, deposes and says that he is the petitioner above named; that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true. Joseph Radice.

Sworn to before me this 11th day of November, 1922. Marion Abbott, Notary Public, Erie County, N. Y.

[File endorsement omitted.]

STATE OF NEW YORK:

City Court of Buffalo.

[Title omitted.]

Bond on Writ of Error.

[Filed Nov. 24, 1922.]

[File endorsement omitted.]

STATE OF NEW YORK:

City Court of Buffalo.

[Title omitted.]

Order Allowing Writ of Error.

[Filed Nov. 24, 1922.]

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the City Court of Buffalo, to which court the record in this case was remitted by the Court of Appeals, the highest court of the State of New York and which City Court of Buffalo now has the record in this case, and upon examination of said petition and record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter.

It is ordered that a writ of error be, and is hereby, allowed to the said City of Buffalo from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby, approved.

Dated November 21st, 1922. Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York.

[File endorsement omitted.]

Writ of Error.

[Filed Nov. 24, 1922.]

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Judges of the City Court of Buffalo, New York, Greeting:

Because, in the record and proceedings, as also in rendition of the judgment of a plea which is in said City Court of Buffalo, on a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which decision could be had in the said suit between the People of the State of New York, and Joseph Radice, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said state on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in

favor of their validity, or wherein was drawn in question the constitution of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such clause of the said Constitution, statute, treaty or commission; a manifest error had happened to the great damage of the said defendant, as is said and appears by his complaint. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this 21st day of November, in the year of our Lord one thousand nine hundred and twenty-two. William R. Stansbury, Clerk of the Supreme Court of the United States.

The above writ is allowed by Frank H. Hiscock, Chief Judge of the New York Court of Appeals.

[File endorsement omitted.]

Citation and Service.

[Filed Nov. 24, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the People of the State of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the City Court of Buffalo, wherein Joseph Radice is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, this 21st day of November, in the year of our Lord one thousand nine hundred and twenty-two. Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York.

Copy of the above citation and copy of the writ of error herein served on the undersigned District Attorney of Erie County this 24th day of November, 1922. Guy B. Moore, Attorney for Defendants in Error.

[File endorsement omitted.]

Certificate of Lodgment.

STATE OF NEW YORK, *ss:*

City Court of Buffalo.

I, George W. Reibold, Chief Clerk of the City Court of Buffalo in the State of New York, do hereby certify that there was lodged with me as such Clerk on November 24th, 1922, in the case of the People of the State of New York against Joseph Radice, defendant, who is plaintiff-in-error in the Supreme Court of the United States:

1. Copy of his Assignment of Errors.
2. Copy of Petition for Writ of Error.
3. The original Bond on the Writ of Error with its approval of which a copy is annexed hereto.
4. Copy of the Order allowing the Writ of Error from the Supreme Court of the United States to the City Court of Buffalo.
5. Two copies of the Writ of Error as herein set forth, one for defendants-in-error and one to file in my office.
6. Copy of the Citation on Writ of Error to defendants-in-error.
7. Copy of the Prayer of plaintiff-in-error for Reversal of Judgment.

In witness whereof I have hereunto set my hand and affixed the seal of the City Court of Buffalo in the City of Buffalo in the State of New York on this 15th day of December, 1922. George W. Reibold, Chief Clerk of the City Court of Buffalo. [Seal of the City Court of Buffalo.]

[File endorsement omitted.]

Supreme Court of the United States, October Term, 1922.

No. —.

[Title omitted.]

Stipulation as to Printing.

Whereas, in the transcript of the record as made up by the Clerk of the City Court of Buffalo in the above entitled cause, containing certain documents appear to be duplicated.

Therefore it is stipulated by and between the parties hereto through their respective attorneys that the Clerk of the Supreme

Court of the United States in printing said record shall omit the following documents appearing in said record, to-wit:

1. The several affidavits of service attached respectively to the several documents contained in said record.

2. The bond on said Writ of Error.

3. The certificate as to the lodgment of certain papers with the Clerk of the City Court of Buffalo.

4. And such other papers in said record as may not be necessary for the consideration of the Supreme Court of the United States in the disposition of said case, provided, however, that nothing be omitted affecting the jurisdiction of said Supreme Court of the United States, and provided further that all papers necessary to raise the federal questions involved be attached to, printed and added to the printed record of said case as used in the Court of Appeals of the State of New York.

Dated this 16th day of December, 1922. Henry W. Hill, Attorney for Plaintiff-in-Error. Guy B. Moore, Attorney for Defendants-in-Error.

Supreme Court of the United States.

[Title omitted.]

Affidavit of Service.

Service of copies of the affidavit of no opinions in the Court of Appeals or in the Appellate Division of the Courts of New York, and also of the assignment of errors on an application for writ of error from the Supreme Court of the United States to the City Court of Buffalo, and of the petition for writ of error from the Supreme Court of the United States to the City Court of Buffalo, and the bond on writ of error from the Supreme Court of the United States to the City Court of Buffalo duly approved, and of the order allowing writ of error from the Supreme Court of the United States to the City Court of Buffalo, and of the writ of error from the Supreme Court of the United States to the City Court of Buffalo, and of the citation on writ of error to defendants in error, and of the prayer for reversal in the above entitled action on the undersigned District Attorney of Erie County in the State of New York is admitted this 24th day of November, 1922, and the undersigned District Attorney of Erie County in the State of New York hereby authorizes and directs the Clerk of the Supreme Court of the United States to enter the appearance of the undersigned as attorney for defendants in error in the above entitled action.

Dated, Buffalo, N. Y., November 24th, 1922. Guy B. Moore, Attorney for Defendants in Error, District Attorney of Erie County, in the State of New York.

Supreme Court of the United States, October Term, 1922.

No. —.

[Title omitted.]

Waiver of Service.

The undersigned District Attorney of Erie County and attorney for The People of the State of New York, having heretofore been served with a full and complete printed Record used upon the hearing of said case in said Court of Appeals, and having heretofore received a copy of the Remittitur from the Court of Appeals to the City Court of Buffalo in the case of the People of the State of New York against Joseph Radice, and having entered the judgment of affirmance in said case in the City Court of Buffalo upon said Remittitur and having heretofore been served with a copy of the Assignment of Errors on the application for Writ of Error from the Supreme Court of the United States to the City Court of Buffalo made by the above named plaintiff-in-error and having also been served with the Petition of said plaintiff-in-error for a Writ of Error from the Supreme Court of the United States to the City Court of Buffalo and also having been served with a copy of the Order of Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of New York allowing said Writ of Error and having also been served with a copy of the said Writ of Error and a copy of the Bond approved by said Chief Judge accompanying said Writ of Error, and having also been served with a citation to said defendants-in-error made by said Chief Judge of the Court of Appeals of the State of New York, all of which were served on or before the 24th day of November, 1922, now therefore, the undersigned Guy B. Moore, District Attorney of Erie County, New York, and attorney for the People of the State of New York, above named defendants-in-error, hereby waives the service on him as District Attorney of Erie County and attorney for defendants-in-error, of copies of the printed record forming the record in the above entitled action in the Supreme Court of the United States which is to be made up by the Clerk of the Supreme Court of the United States from the printed record in this case used in the Court of Appeals of the State of New York and also from the several papers hereinbefore mentioned, with all of which the undersigned has been duly served and has in his possession for use in preparing his brief for and on the argument of the above entitled case in the Supreme Court of the United States.

Dated Buffalo, New York, December 15th, 1922. Guy B. Moore, District Attorney of Erie County, New York, and Attorney for Defendants-in-Error.

[File endorsement omitted.]

Endorsed on cover: File No. 29,308. New York City Court of Buffalo. Term No. 758. Joseph Radice, plaintiff in error, vs. People of the State of New York. Filed December 23rd, 1922. File No. 29,308.